

Calendar No. 333

105TH CONGRESS  
2D Session  
**S. 1889**

**A BILL**

To reduce tobacco use by children and others through an increase in the cost of tobacco products, the imposition of advertising and marketing limitations, assuring appropriate tobacco industry oversight, expanding the availability of tobacco use cessation programs, and implementing a strong public health prevention and education strategy that involves the private sector, schools, States, and local communities.

APRIL 1, 1998

Read the second time and placed on the calendar

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**IN THE SENATE OF THE UNITED STATES**

MARCH 31, 1998

Mr. HARKIN (for himself, Mr. CHAFEE, and Mr. GRAHAM) introduced the following bill; which was read the first time

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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       “Kids Deserve Freedom From Tobacco Act of 1998” or  
 6       the “KIDS Act”.

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

Sec. 1. Short title; table of contents.  
 Sec. 2. Findings.  
 Sec. 3. Purpose.  
 Sec. 4. Scope and effect.  
 Sec. 5. Definitions.

**TITLE I—INCENTIVES TO REDUCE YOUTH TOBACCO USE**

**Subtitle A—National Tobacco Trust Fund**

Sec. 101. Establishment.  
 Sec. 102. Payments by tobacco product manufacturers.  
 Sec. 103. Enforcement.

**Subtitle B—Payments to States**

Sec. 111. Payments to States.  
 Sec. 112. State bonus payments.

**Subtitle C—Annual Youth Tobacco Use Reductions**

Sec. 131. Purpose.  
 Sec. 132. Child tobacco use surveys.  
 Sec. 133. Reduction in underage tobacco product usage.  
 Sec. 134. Noncompliance.  
 Sec. 135. Enforcement.

**TITLE II—REGULATION OF THE TOBACCO INDUSTRY**

**Subtitle A—Food and Drug Administration Jurisdiction and General  
 Authority**

Sec. 201. Statement of general authority.  
 Sec. 202. Nonapplicability to other drugs or devices.  
 Sec. 203. Conforming amendments to confirm jurisdiction.  
 Sec. 204. General rule.  
 Sec. 205. Safety and efficacy standard and recall authority.

**Subtitle B—Regulation of Tobacco Products**

Sec. 211. Performance standards.

Sec. 212. Application of Federal Food, Drug, and Cosmetic Act to tobacco products.

#### “SUBCHAPTER F—TOBACCO PRODUCT DEVELOPMENT, MANUFACTURING, AND ACCESS RESTRICTIONS, LICENSING, AND ANTI-SMUGGLING

##### “PART A—TOBACCO PRODUCT DEVELOPMENT, MANUFACTURING, AND ACCESS RESTRICTIONS

“Sec. 570. Promulgation of regulations.

“Sec. 571. Mail-order sales.

“Sec. 572. Tobacco product warnings and packaging.

“Sec. 573. General responsibilities of manufacturers, distributors and retailers.

“Sec. 574. Disclosure and reporting of tobacco and nontobacco ingredients and constituents.

“Sec. 575. Reduced risk products.

“Sec. 576. Access to company information.

“Sec. 577. Oversight of tobacco product manufacturing.

“Sec. 578. Preservation of State and local authority.

“Sec. 579. General responsibilities of manufacturers, distributors and retailers.

Sec. 213. Funding.

Sec. 214. Repeals.

#### Subtitle C—Manufacturer and Product Seller Licensing and Anti-Smuggling

Sec. 221. Definitions.

Sec. 222. Minimal Federal licensing and registration program.

Sec. 223. Licensing and retailer registration.

Sec. 224. Unlawful acts.

Sec. 225. Penalties and compromise of liability.

Sec. 226. General administrative provisions.

Sec. 227. Funding.

Sec. 228. Transitional rules.

Sec. 229. Rules and regulations.

Sec. 230. Severability.

Sec. 231. Effect on State or local law.

Sec. 232. Amendment to Contraband Cigarette Trafficking Act.

#### Subtitle D—Penalties

Sec. 241. Penalties.

Sec. 242. Application of penalties with respect to violations of certain licensing provisions.

### TITLE III—PUBLIC HEALTH INITIATIVES

#### Subtitle A—State-Federal Anti-Tobacco Partnership

##### CHAPTER 1—SCHOOL- AND COMMUNITY-BASED PROGRAMS

Sec. 301. School- and community-based programs.

Sec. 302. National event sponsorship program.

##### CHAPTER 2—COUNTER-ADVERTISING PROGRAMS

Sec. 311. Federal-State counter-advertising programs.

#### CHAPTER 3—NATIONAL CESSATION PROGRAM

Sec. 321. National tobacco cessation program.

Sec. 322. Reports, data, and audits.

##### Subtitle B—Health Research Program

#### CHAPTER 1—NATIONAL FUND FOR HEALTH RESEARCH

Sec. 331. Establishment of National Fund for Health Research.

#### CHAPTER 2—TOBACCO PREVENTION RESEARCH

Sec. 335. National Tobacco Research Task Force.

Sec. 336. Research activities.

Sec. 337. Tobacco prevention database and evaluation.

##### Subtitle C—Miscellaneous Provisions

Sec. 341. Limitation on administrative costs.

Sec. 342. Withholding.

Sec. 343. Nondiscrimination.

Sec. 344. International tobacco control.

### TITLE IV—LIABILITY PROVISIONS AND CONSENT DECREES

Sec. 400. Dismissal of and limitations on civil actions.

##### Subtitle A—Liability Provisions

Sec. 401. National victims' compensation fund.

Sec. 402. Rule of construction.

Sec. 403. Attorney's fees and expenses.

Sec. 404. Public disclosure of tobacco industry documents.

##### Subtitle B—Consent Decrees

Sec. 411. Consent decrees.

### TITLE V—TOBACCO FARM FAMILY AND COMMUNITY ASSISTANCE TRUST FUND

Sec. 501. Tobacco farm family and community assistance trust fund.

### TITLE VI—REDUCING EXPOSURE TO ENVIRONMENTAL TOBACCO SMOKE

Sec. 601. Education and outreach.

Sec. 602. Involuntary exposure to environmental tobacco smoke.

Sec. 603. Coverage of Congressional buildings.

### TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Whistleblower protections.

Sec. 702. Prohibition on use of funds to facilitate the exportation or promotion of tobacco.

Sec. 703. Provisions relating to Native Americans.

Sec. 704. Preservation of State and local authority.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

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

7 (2) The use of tobacco products by the Nation's  
8 children is a pediatric disease of epic and worsening  
9 proportions that results in new generations of to-  
10 bacco-dependent children and adults.

11 (3) Virtually all new users of tobacco products  
12 are under legal age. Every day, 3,000 young people  
13 become regular smokers. Of these children, 1,000  
14 will die prematurely from a tobacco-related disease.

15 (4) Tobacco products are inherently dangerous  
16 and cause cancer, heart disease, and other serious  
17 adverse health effects.

18 (5) Tobacco advertising and marketing is often  
19 deceptive and misleading and contributes signifi-  
20 cantly to the use of nicotine-containing tobacco prod-  
21 ucts by children.

22 (6) Because past efforts to restrict the advertis-  
23 ing and marketing of tobacco products have failed to  
24 effectively curb tobacco use by children, new, more  
25 comprehensive restrictions on the sale, promotion,  
26 and distribution of such products are needed.

1           (7) Federal and State governments have lacked  
2           the resources to adequately address the public health  
3           and societal problems caused by the use of tobacco  
4           products.

5           (8) Federal and State public health officials,  
6           the public health community, Congress, and the pub-  
7           lic at large recognize that the tobacco industry  
8           should be subject to ongoing oversight.

9           (9) Under Article 1, section 8 of the Constitu-  
10          tion, Congress is vested with the responsibility for  
11          regulating interstate commerce.

12          (10) The sale, distribution, marketing, advertis-  
13          ing and use of tobacco products are activities in and  
14          substantially affecting interstate commerce. Such  
15          products are sold, marketed, advertised, and distrib-  
16          uted in interstate commerce on a nationwide basis,  
17          and have a substantial effect on the Nation's econ-  
18          omy.

19          (11) The sale, distribution, marketing, advertis-  
20          ing, and use of such products substantially affect  
21          interstate commerce through the health care and  
22          other costs attributable to the use of tobacco prod-  
23          ucts.

24          (12) Civil actions against tobacco product man-  
25          ufacturers and others are pending in Federal and

1 State courts arising from the sale, distribution, mar-  
2 keting, advertising, and use of tobacco products.  
3 Among these actions are cases brought by the attor-  
4 neys general of more than 40 States, certain cities  
5 and counties, the Commonwealth of Puerto Rico,  
6 and other parties seeking to recover monies ex-  
7 pended to treat tobacco-related diseases and for the  
8 protection of minors and consumers, as well as pen-  
9 alties and other relief for violations of antitrust,  
10 health, consumer protection, and other laws.

11 (13) Civil actions have been filed throughout  
12 the United States against tobacco product manufac-  
13 turers and their distributors, trade associations, law  
14 firms and consultants on behalf of individuals or  
15 classes of individuals claiming to be dependent upon  
16 and injured by tobacco products.

17 (14) It is in the public interest for Congress to  
18 adopt comprehensive public health legislation be-  
19 cause of tobacco's unique position in the Nation's  
20 history and economy; the need to prevent the sale,  
21 distribution, marketing, and advertising of tobacco  
22 products to persons below legal age; and the need to  
23 educate the public, especially young people, regard-  
24 ing the health effects of using tobacco products.



1           (15) The public interest requires a timely, fair,  
2           equitable, and consistent result that will serve the  
3           public interest by—

4                   (A) providing that a portion of the costs of  
5           treatment for diseases and adverse health ef-  
6           fects associated with the use of tobacco prod-  
7           ucts is borne by the manufacturers of these  
8           products; and

9                   (B) restricting throughout the Nation the  
10          sale, distribution, marketing, and advertising of  
11          tobacco products only to persons of legal age.

12          (16) The benefits to the Nation of enacting  
13          Federal legislation to accomplish these goals would  
14          be significant in human and economic terms.

15          (17) The Food and Drug Administration has  
16          found that reducing the use of tobacco by minors by  
17          50 percent would prevent well over 60,000 pre-  
18          mature deaths, and that the monetary value of its  
19          regulations on tobacco will save up to  
20          \$43,000,000,000 each year in reduced medical costs,  
21          improved productivity, and the avoidance of pre-  
22          mature deaths.

23          (18) The Nation's major tobacco product manu-  
24          facturers have pledged in an agreement reached with  
25          several State attorneys general that such manufac-

1       turers will comply fully with increased Federal regu-  
2       lation, substantial industry payments, and focus in-  
3       tense efforts on dramatic reductions in youth access  
4       and underage usage of tobacco products. Further,  
5       the industry has agreed to pay significant penalties  
6       for failure to meet targets for the reduction of youth  
7       use. In addition, the industry has actively sought  
8       passage of tobacco settlement legislation by Con-  
9       gress.

10           (19) As new restrictions on the sale of tobacco  
11       products are enacted, greater controls on the dis-  
12       tribution of tobacco products will be needed to en-  
13       sure that the new restriction are not evaded.

14           (20) It is in the public interest for Congress to  
15       adopt legislation to address the public health crisis  
16       created by the actions of the tobacco industry.

17 **SEC. 3. PURPOSE.**

18       It is the purpose of this Act to—

19           (1) dramatically reduce the use of tobacco prod-  
20       ucts, especially among children;

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

23           (3) affirm the authority of the Food and Drug  
24       Administration to regulate the manufacture, market-  
25       ing, distribution, and sale of tobacco products under

1 the Food, Drug and Cosmetic Act (21 U.S.C. 321  
2 et seq.);

3 (4) require that the tobacco industry fund both  
4 Federal and State oversight of the tobacco industry  
5 from on-going payments by tobacco product manu-  
6 facturers;

7 (5) require tobacco product manufacturers to  
8 provide ongoing funding to be used for an aggressive  
9 Federal, State, and local enforcement program and  
10 for a nationwide retail licensing system to prevent  
11 minors from obtaining tobacco products, while ex-  
12 pressly permitting and providing incentives to the  
13 States to adopt additional measures that further re-  
14 duce the products' use;

15 (6) impose severe financial surcharges on to-  
16 bacco product manufacturers if they do not substan-  
17 tially reduce tobacco use by children;

18 (7) authorize the Food and Drug Administra-  
19 tion to set national standards controlling the manu-  
20 facture of tobacco products and the identity, public  
21 disclosure, and amount of ingredients used in such  
22 products;

23 (8) provide new and flexible enforcement au-  
24 thority to ensure that the tobacco industry makes ef-

1        forts to develop and introduce tobacco products that  
2        are less harmful;

3            (9) ensure that the public is better informed by  
4        requiring that manufacturers of tobacco products  
5        disclose all research which has not previously been  
6        made available, as well as all research generated in  
7        the future relating to the health and dependency ef-  
8        fects or safety of tobacco products;

9            (10) require tobacco product manufacturers to  
10       provide funding for a variety of public health initia-  
11       tives;

12           (11) establish enhanced protections against en-  
13       vironmental tobacco smoke while also permitting  
14       State and local governments to enact additional and  
15       more stringent standards;

16           (12) authorize and fund from payments by to-  
17       bacco manufacturers a continuing national counter-  
18       advertising and tobacco control campaign which  
19       seeks to educate and discourage the public from be-  
20       ginning or continuing to use tobacco products;

21           (13) establish a mechanism to compensate the  
22       States in the settlement of their various claims  
23       against tobacco product manufacturers;

1           (14) authorize and fund from payments by to-  
2       bacco product manufacturers a nationwide program  
3       of smoking cessation;

4           (15) establish and fund from payments by to-  
5       bacco product manufacturers a Victims' Compensa-  
6       tion Fund; and

7           (16) continue to permit the sale of tobacco  
8       products to adults in conjunction with measures to  
9       ensure that they are not sold or accessible to under-  
10      age purchasers.

11 **SEC. 4. SCOPE AND EFFECT.**

12       (a) INTENDED EFFECT.—This Act is not intended by  
13 Congress to—

14           (1) establish a precedent with regard to any  
15       other industry, situation, circumstance, or legal ac-  
16       tion;

17           (2) be construed to provide civil or criminal im-  
18       munity; or

19           (3) except as provided in this Act, affect any  
20       action pending in Federal or State court, or any  
21       agreement, consent decree, or contract of any kind.

22       (b) TAXATION.—Notwithstanding any other provision  
23 of law, this Act (and the amendments made by this Act)  
24 shall not affect any authority of the Secretary of the  
25 Treasury (including any authority assigned to the Bureau

1 of Alcohol, Tobacco and Firearms) or of State or local gov-  
 2 ernments with regard to the taxation of tobacco or tobacco  
 3 products.

4 (c) FEDERAL TRADE COMMISSION AUTHORITY.—Ex-  
 5 cept as expressly provided in this Act, nothing in this Act  
 6 (or the amendments made by this Act) shall be construed  
 7 to reduce any authority of the Federal Trade Commission  
 8 over tobacco or tobacco products.

9 (d) AGRICULTURAL ACTIVITIES.—Except as other-  
 10 wise provided in this Act, nothing in this Act shall be con-  
 11 strued to reduce any authority under existing law of the  
 12 Secretary of Agriculture regarding the growing, cultiva-  
 13 tion or curing of raw tobacco.

14 **SEC. 5. DEFINITIONS.**

15 In this Act:

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

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

1           (3) CIGARETTE.—The term “cigarette” means  
2           any product that contains nicotine, is intended to be  
3           burned under ordinary conditions of use, and con-  
4           sists of—

5                   (A) any roll of tobacco wrapped in paper  
6                   or in any substance not containing tobacco; or

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

13           (4) CIGARETTE TOBACCO.—The term “cigarette  
14           tobacco” means any product that consists of loose  
15           tobacco that contains or delivers nicotine and is in-  
16           tended for use by consumers in a cigarette. Unless  
17           otherwise stated, the requirements of this Act for  
18           cigarettes shall also apply to cigarette tobacco.

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

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

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

14          (8) MANUFACTURER.—The term “manufac-  
15 turer” means any person, including any repacker or  
16 relabeler, who manufactures, fabricates, assembles,  
17 processes, packs, or labels a tobacco product. Any  
18 successor or assign of a manufacturer, as well as  
19 any person affiliated with the manufacturer, shall  
20 have all of the manufacturer’s responsibilities and li-  
21 abilities as set forth in this Act.

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



1           (10) PACKAGE.—The term “package” means  
2           the innermost sealed container, irrespective of the  
3           material from which such container is made, in  
4           which a tobacco product is placed by the manufac-  
5           turer and in which such tobacco product is offered  
6           for sale to a member of the general public.

7           (11) PERSON.—The term “person” means a  
8           firm, partnership, association, corporation, legal rep-  
9           resentative, trustee, receiver or any other legally rec-  
10          ognized entity, including an individual.

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

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

20          (14) RETAILER.—The term “retailer” means  
21          any person who sells or distributes tobacco products  
22          at retail, or who operates a facility where vending  
23          machines or self-service displays are permitted under  
24          this Act.

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

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

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

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

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

1           (20) TOBACCO.—The term ‘tobacco’ means to-  
2       bacco in its unmanufactured form.

3           (21) TOBACCO PRODUCT.—The term “tobacco  
4       product” means cigarettes, cigarette tobacco, smoke-  
5       less tobacco, little cigars, roll-your-own products, ci-  
6       gars, cigarillos, pipe tobacco, roll-your-own products,  
7       and any other product made or derived from tobacco  
8       intended for human consumption.

9           **TITLE I—INCENTIVES TO**  
10       **REDUCE YOUTH TOBACCO USE**  
11       **Subtitle A—National Tobacco Trust**  
12                               **Fund**

13       **SEC. 101. ESTABLISHMENT.**

14       (a) ESTABLISHMENT AND TRUSTEES.—

15           (1) IN GENERAL.—There is established in the  
16       Treasury of the United States a trust fund to be  
17       known as the “National Tobacco Trust Fund” (re-  
18       ferred to in this Act as the “Trust Fund”), consist-  
19       ing of such amounts as may be appropriated or cred-  
20       ited to the Trust Fund.

21           (2) TRUSTEES.—The trustees of the Trust  
22       Fund shall be the Secretary of the Treasury, the  
23       Secretary of Health and Human Services, and the  
24       Attorney General.

1 (b) TRANSFERS.—There are hereby appropriated and  
 2 transferred to the Trust Fund an amount equal to the—

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

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

7 (3) amounts repaid or recovered under subtitle  
 8 B, including interest thereon.

9 (c) REPAYABLE ADVANCES.—

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

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

21 (3) RATE OF INTEREST.—Interest on advances  
 22 made pursuant to this subsection shall be at a rate  
 23 determined by the Secretary of the Treasury (as of  
 24 the close of the calendar month preceding the month  
 25 in which the advance is made) to be equal to the

1 current average market yield on outstanding market-  
2 able obligations of the United States with remaining  
3 period to maturity comparable to the anticipated pe-  
4 riod during which the advance will be outstanding.

5 (d) EXPENDITURES FROM TRUST FUND.—

6 (1) APPROPRIATIONS.—

7 (A) IN GENERAL.—Amounts in the Na-  
8 tional Tobacco Trust Fund shall be appro-  
9 priated by the Committee on Appropriations of  
10 the House of Representatives and the Commit-  
11 tee on Appropriations of the Senate exclusively  
12 for the purposes authorized in this Act.  
13 Amounts appropriated for each program au-  
14 thorized under this Act shall be determined by  
15 the percentages contained in the tables in para-  
16 graph (2).

17 (B) PERMISSIBLE TRANSFERS.—Notwith-  
18 standing subparagraph (A), the Committees re-  
19 ferred to in such subparagraph may transfer  
20 funds among the programs authorized under  
21 this Act if the Committee reports and state-  
22 ment of managers that accompany any such ap-  
23 propriations Act provide an explanation of any  
24 such transfers, except that no transfers shall be  
25 made under this subparagraph—

- 1 (i) to the National Institutes of  
 2 Health;  
 3 (ii) for purposes of making payments  
 4 under section 111;  
 5 (iii) from the National Victim's Com-  
 6 pensation Fund; or  
 7 (iv) from the amounts available for  
 8 States under section 111(b)(1).

9 (2) EXPENDITURE TABLES.—For purposes of  
 10 paragraph (1), amounts shall be made available in  
 11 each fiscal year as follows:

12 (A) STATE REIMBURSEMENT; FOOD AND  
 13 DRUG ADMINISTRATION.—

STATE SHARE  
 (Percentage of amount in Trust  
 Fund for fiscal year involved)

Fiscal Year	Base Pay- ment	Block Grant	Bonus Pool
1999	35.0	35.0	0.00
2000	10.0	10.0	0.00
2001	9.0	9.0	0.00
2002	10.0	10.0	2.67
2003	13.0	13.0	2.67
2004	13.0	13.0	2.67
2005	16.0	16.0	2.67
2006	16.0	16.0	2.67
2007	16.0	16.0	2.67
2008	16.0	16.0	2.67
2009	16.0	16.0	2.67
2010	16.0	16.0	2.67
2011	16.0	16.0	2.67
2012	16.0	16.0	2.67
2013	16.0	16.0	2.67
2014	16.0	16.0	2.67
2015–2024	16.0	16.0	2.67

14 (B) PUBLIC HEALTH PROGRAMS.—

## PUBLIC HEALTH

(Percentage of amount in Trust Fund for fiscal year involved)

Fiscal Year	Smoking Cessation	Counter- advertis- ing	Communi- ty- Based Preven- tion	School- Based Preven- tion	Event Sponsor- ship	Youth Database
1999	1.3333	2.6667	2.6667	1.3333	0.0	2.6667
2000	6.6667	4.0000	3.8333	1.1667	0.5	1.1667
2001	5.3333	3.2000	3.4667	1.0667	0.4	0.9333
2002	5.3333	2.6667	3.3333	1.0667	0.4	0.9333
2003	5.3333	2.9333	4.2667	1.2000	0.4	0.9333
2004	5.3333	2.9333	5.0667	1.3333	0.4	0.9333
2005	5.3333	2.9333	5.0667	1.4667	0.4	0.9333
2006	8.0000	2.6667	5.0667	1.4667	0.4	0.9333
2007	8.0000	2.6667	5.0667	1.4667	0.4	0.9333
2008	8.0000	2.6667	5.0667	1.4667	0.4	0.9333
2009	8.0000	2.6667	5.0667	1.4667	0.4	0.9333
2010	8.0000	2.6667	5.0667	1.6000	0.0	0.9333
2011	8.0000	2.6667	5.0667	1.6000	0.0	0.9333
2012	8.0000	2.6667	5.0667	1.6000	0.0	0.9333
2013	8.0000	2.6667	5.0667	1.6000	0.0	0.9333
2014	8.0000	2.6667	5.0667	1.6000	0.0	0.9333
2015–2024	8.0000	2.9333	5.3333	1.6000	0.0	0.9333

## 1 (C) RESEARCH.—

## RESEARCH/FDA

(Percentage of amount in Trust Fund for  
fiscal year involved)

Fiscal Year	Health Re- search	Tobacco Pre- vention	FDA
1999	2.67	0.0	2.667
2000	21.5	4.0	2.0
2001	17.2	3.2	1.6
2002	17.2	3.2	1.6
2003	17.2	3.2	1.6
2004	17.2	3.2	1.6
2005	17.2	3.2	1.6
2006	17.2	3.2	1.6
2007	17.2	3.2	1.6
2008	17.2	3.2	1.6
2009	17.2	3.2	1.6
2010	17.2	3.2	1.6
2011	17.2	3.2	1.6
2012	17.2	3.2	1.6
2013	17.2	3.2	1.6
2014	17.2	3.2	1.6
2015–2024	17.2	3.2	1.6

2 (D) MISCELLANEOUS PROGRAMS AND AC-  
3 TIVITIES.—

## MISCELLANEOUS

(Percentage of amount in Trust Fund for fiscal year involved)

Fiscal Year	Agri- culture	Victims' Com- pensation	ETS	Native Americans	Inter- national Education	Anti- Smuggling
1999	0.0000	0.000	0.0000	0.3333	0.3333	1.3333
2000	4.5000	26.665	1.3333	1.3333	0.6667	0.6667
2001	21.0667	21.332	1.0667	1.0667	0.5333	0.5333
2002	17.0667	21.332	1.0667	1.0667	0.5333	0.5333
2003	9.7333	21.332	1.0667	1.0667	0.5333	0.5333
2004	8.8000	21.332	1.0667	1.0667	0.5333	0.5333
2005	2.6667	21.332	1.0667	1.0667	0.5333	0.5333
2006	0.2667	21.332	1.0667	1.0667	0.5333	0.5333
2007	0.2667	21.332	1.0667	1.0667	0.5333	0.5333
2008	0.2667	21.332	1.0667	1.0667	0.5333	0.5333
2009	0.2667	21.332	1.0667	1.0667	0.5333	0.5333
2010	0.5333	21.332	1.0667	1.0667	0.5333	0.5333
2011	0.5333	21.332	1.0667	1.0667	0.5333	0.5333
2012	0.5333	21.332	1.0667	1.0667	0.5333	0.5333
2013	0.5333	21.332	1.0667	1.0667	0.5333	0.5333
2014	0.5333	21.332	1.0667	1.0667	0.5333	0.5333
2015–2024	0.0000	21.332	1.0667	1.0667	0.5333	0.5333

1           (3) BUDGETARY IMPACT.—Amounts appro-  
2           priated under paragraph (1) and outlays flowing  
3           from such appropriations shall not be taken into ac-  
4           count for purposes of any budget enforcement proce-  
5           dures under the Congressional Budget of 1974 and  
6           the Balanced Budget and Emergency Deficit Control  
7           Act of 1985.

8           (3) DEFINITIONS AND USE OF FUNDS.—With  
9           respect to the tables in paragraph (2)—

10           (A) the term “base payment” as used in  
11           the table under subparagraph (A) means the  
12           amounts for payments to States under section  
13           111(b)(1);

14           (B) the term “block grant” as used in the  
15           table under subparagraph (A) means the



1 amount for payments to States under section  
2 111(b)(2);

3 (C) the term “bonus pool” as used in the  
4 table under subparagraph (A) means the  
5 amounts for payments to States under section  
6 112;

7 (D) the term “smoking cessation” as used  
8 in the table under subparagraph (B) means the  
9 amounts to carry out section 321;

10 (E) the term “counter-advertising” as used  
11 in the table under subparagraph (B) means the  
12 amounts to carry out section 311;

13 (F) the term “community-based preven-  
14 tion” as used in the table under subparagraph  
15 (B) means the amounts to carry out section  
16 301;

17 (G) the term “school-based prevention” as  
18 used in the table under subparagraph (B)  
19 means the amounts to carry out section 301;

20 (H) the term “event sponsorship” as used  
21 in the table under subparagraph (B) means the  
22 amounts to carry out section 302;

23 (I) the term “youth database” as used in  
24 the table under subparagraph (B) means the  
25 amounts to carry out section 337;

1 (J) the term “biomedical research” as used  
2 in the table under subparagraph (C) means the  
3 amounts to carry out section 331;

4 (K) the term “applied research” as used in  
5 the table under subparagraph (C) means the  
6 amounts to carry out section 336;

7 (L) the term “FDA” as used in the table  
8 under subparagraph (C) means the amounts for  
9 the Food and Drug Administration to carry out  
10 title II (and the amendments made by such  
11 title);

12 (M) the term “agriculture” as used in the  
13 table under subparagraph (D) means the  
14 amounts to carry out title V;

15 (N) the term “victims’ compensation” as  
16 used in the table under subparagraph (D)  
17 means the amounts to carry out section 401;

18 (O) the term “ETS” as used in the table  
19 under subparagraph (D) means the amounts to  
20 carry out title VI;

21 (P) the term “Native Americans” as used  
22 in the table under subparagraph (D) means the  
23 amounts to carry out section 703;

24 (Q) the term “international education” as  
25 used in the table under subparagraph (D)

1 means the amounts to carry out section 344;  
 2 and

3 (R) the term “anti-smuggling” as used in  
 4 the table under subparagraph (D) means the  
 5 amounts to carry out section 226.

6 (e) PROHIBITION ON TREATMENT AS OVERPAY-  
 7 MENT.—

8 (1) IN GENERAL.—Section 1903(d)(3) of the  
 9 Social Security Act (42 U.S.C. 1396b(d)(3)) is  
 10 amended—

11 (A) by inserting “(A)” before “The”; and

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

13 “(B) Subparagraph (A) and paragraph (2)(B) shall  
 14 not apply to any amount recovered or paid to a State as  
 15 part of a settlement or judgment reached in litigation initi-  
 16 ated or pursued by a State against one or more manufac-  
 17 turers of tobacco products, as defined in section 5702(d)  
 18 of the Internal Revenue Code of 1986.”.

19 (2) EFFECTIVE DATE.—The amendment made  
 20 by subsection (a) applies to amounts recovered or  
 21 paid to a State before, on, or after the date of enact-  
 22 ment of this Act.

23 (f) BUDGETARY EFFECT.—

24 (1) IN GENERAL.—The Director of the Office of  
 25 Management and Budget shall annually determine

1       whether the payments made under section 102 have  
 2       resulted in a decrease in the amount of revenues col-  
 3       lected under the excise tax provisions of chapter 52  
 4       of the Internal Revenue Code of 1986.

5           (2) NOTICE.—The Director shall notify the  
 6       trustees in any year in which the Director deter-  
 7       mines that a shortfall described in paragraph (1) ex-  
 8       ists. Upon such a notification, the trustees shall  
 9       transfer from the Trust Fund to the General Fund  
 10      of the Treasury an amount necessary to make up  
 11      such shortfall.

12          (g) INCREASE IN AMOUNTS.—The amounts described  
 13      in the tables under subsection (d)(2) shall be adjusted by  
 14      the Trustees to account for any adjustments made under  
 15      section 102(b) relating to inflationary adjustments or sec-  
 16      tion 102(e)(1) relating to the deductibility of payments by  
 17      manufacturers.

18   **SEC. 102. PAYMENTS BY TOBACCO PRODUCT MANUFACTUR-**  
 19                           **ERS.**

20          (a) PAYMENTS.—

21           (1) INITIAL PAYMENT.—Not later than 90 days  
 22      after the date of enactment of this Act, each manu-  
 23      facturer shall pay to the Trust Fund an amount  
 24      that bears the same ratio to \$10,000,000,000 as the  
 25      tobacco product market share of the manufacturer

1 bears to the tobacco market share of all tobacco  
2 manufacturers for the year preceding the year in  
3 which the determination is being made.

4 (2) SUBSEQUENT PAYMENT.—Not later than  
5 October 1, 1999, each manufacturer shall pay to the  
6 Trust Fund an amount that bears the same ratio to  
7 \$20,000,000,000 as the tobacco product market  
8 share of the manufacturer bears to the tobacco mar-  
9 ket share of all tobacco manufacturers for the year  
10 preceding the year in which the determination is  
11 being made.

12 (3) ANNUAL PAYMENTS AND COLLECTION.—  
13 Not later than October 1, 2000, and each October  
14 1 thereafter, each manufacturer shall pay to the  
15 Trust Fund an amount that bears the same ratio to  
16 \$25,000,000,000 as the tobacco product market  
17 share of the manufacturer bears to the tobacco mar-  
18 ket share of all tobacco manufacturers for the year  
19 preceding the year in which the determination is  
20 being made.

21 (4) PAYMENTS APPLICABLE TO CIGARS.—Prior  
22 to the date of the completion of the first annual per-  
23 formance survey under section 132(a), the Secretary  
24 shall not consider the manufacture of cigars for pur-

1 poses of determining the amount that a manufac-  
2 turer shall be assessed under this subsection.

3 (5) NO REQUIREMENT FOR PAYMENT.—The  
4 Secretary shall not require that a manufacturer  
5 make a payment under this subsection for any to-  
6 bacco product for any fiscal year if the Secretary de-  
7 termines that the tobacco product involved as manu-  
8 factured by the manufacturer is used by less than  
9 0.5 percent of the total number of children deter-  
10 mined to have used any tobacco product as manufac-  
11 tured by all manufacturers for the year involved.

12 (6) APPLICATION TO CERTAIN MANUFACTUR-  
13 ERS.—The provisions of this subsection shall apply  
14 to a manufacturer that begins manufacturing to-  
15 bacco products after the date of enactment of this  
16 Act, except that if such a manufacturer fails to  
17 make payments as provided for in this subsection,  
18 such manufacturer shall pay to the Trust Fund an  
19 amount equal to 150 percent of the amount that  
20 such manufacturer would have paid under this sub-  
21 section.

22 (7) NONAPPLICATION TO CERTAIN MANUFAC-  
23 TURERS.—

24 (A) EXEMPTION.—A manufacturer de-  
25 scribed in subparagraph (B) shall be exempt

1 from the requirements of this section relating  
2 to—

3 (i) the payment of an initial payment  
4 under subsection (a)(1); and

5 (ii) the payment of an amount equal  
6 to 40 percent of the annual assessments  
7 under this section otherwise applicable to  
8 such manufacturer.

9 (B) MANUFACTURER.—A manufacturer  
10 described in this subparagraph is a manufac-  
11 turer that—

12 (i) has resolved tobacco-related civil  
13 actions with more than 25 States prior to  
14 January 1, 1998 through written settle-  
15 ment agreements signed by the attorneys  
16 general of such States; and

17 (ii) not later than December 31,  
18 1998, provides to all other States the op-  
19 portunity to enter into written settlement  
20 agreements that are substantially similar  
21 to the agreements described in clause (i)  
22 and provides such other States with the  
23 most favorable annual payment terms pro-  
24 vided in the settlement agreements de-  
25 scribed in clause (i).

1 (C) LIMITATION.—The provisions of sub-  
2 paragraph (A)(ii) shall apply only to assess-  
3 ments on cigarettes to the extent that such  
4 cigarettes constitute less than 3 percent of all  
5 cigarettes manufactured and distributed for  
6 consumers in any year.

7 (b) INFLATION ADJUSTMENT.—

8 (1) IN GENERAL.—Except with respect to the  
9 amount relating to the National Victims' Compensa-  
10 tion Fund under section 401 as described in the  
11 table under section 101(d)(2), the amount described  
12 in subsection (a)(3) shall be increased by 3 percent  
13 each year, or adjusted each year to reflect the in-  
14 crease in the Consumer Price Index for all urban  
15 consumers (as published by the Bureau of Labor  
16 Statistics) from the year previous to the year for  
17 which the adjustment is being applied, whichever is  
18 greater.

19 (2) NATIONAL VICTIMS' COMPENSATION  
20 FUND.—The amount described in subsection (a)(3)  
21 relating to the National Victims' Compensation  
22 Fund under section 401 as described in the table  
23 under section 101(d)(2), shall be increased by 3 per-  
24 cent each year, or adjusted each year to reflect the  
25 increase in the Medical Consumer Price Index (as



1 published by the Bureau of Labor Statistics) from  
2 the year previous to the year for which the adjust-  
3 ment is being applied, whichever is greater.

4 (c) REQUIRED PASS THROUGH.—The trustees shall  
5 certify that, with respect to an assessment paid by a man-  
6 ufacturer under this section under paragraphs (1) and (2)  
7 of subsection (a), the manufacturer shall increase the price  
8 of its tobacco products so as to reflect the amount of the  
9 assessment, but in no case shall such increase be less  
10 than—

11 (1) in the case of cigarettes, \$1.00 with respect  
12 to the assessment under subsection (a)(2), and an  
13 additional \$.50 cents with respect to the assessment  
14 under subsection (a)(3); and

15 (2) in the case of other tobacco products, an  
16 amount comparable to the amount of the increase  
17 under paragraph (1).

18 (d) FAILURE TO MAKE PAYMENT.—Upon a deter-  
19 mination that a manufacturer has failed to pay an assess-  
20 ment as required under this section—

21 (1) the provisions of subtitle A of title IV shall  
22 not apply with respect to such manufacturer;

23 (2) the Secretary shall impose penalties on the  
24 manufacturer as provided for under section 103; and

1           (3) in full within 90 days of the date on which  
 2           such payment is due, the Secretary shall revoke the  
 3           tobacco license of such manufacturer under section  
 4           222 until such time as such assessment is fully paid.  
 5           (e) NO TAX BENEFIT.—

6           (1) IN GENERAL.—With respect to a payment  
 7           under subsection (a), an amount equal to 25 percent  
 8           of such payment shall not be considered to be an or-  
 9           dinary and necessary expense in carrying on a trade  
 10          or business for purposes of the Internal Revenue  
 11          Code of 1986 and shall not be tax deductible.

12          (2) LOOK-BACK PENALTIES.—The payment of  
 13          penalties under subtitle B shall not be considered to  
 14          be an ordinary and necessary expense in carrying on  
 15          a trade or business for purposes of the Internal Rev-  
 16          enue Code of 1986 and shall not be deductible.

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

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

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

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

24                       “(H) a payment, an assessment, or a pen-  
 25                       alty to be paid into the National Tobacco Trust

1 Fund under section 102 (or any other section)  
2 of the KIDS Act.”.

3 **SEC. 103. ENFORCEMENT.**

4 (a) IN GENERAL.—The Secretary of the Treasury, in  
5 consultation with the Secretary of Health and Human  
6 Services, shall enforce the provisions of section 102 with  
7 respect to the manufacturer that fails to pay any amount  
8 assessed under section 102.

9 (b) AMOUNT OF PENALTY.—The amount of the pen-  
10 alty imposed by subsection (a) on any failure with respect  
11 to a manufacturer shall be established by the Secretary  
12 of the Treasury for each day during the noncompliance  
13 period, except that no such penalty shall be less than the  
14 greater of—

15 (1) \$100,000 plus interest; or

16 (2) an amount equal to 2 percent of the amount  
17 of the annual payment involved with respect to the  
18 manufacturer.

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

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

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

(d) FINANCIAL OBLIGATIONS NOT DISCHARGEABLE.—No financial responsibility or liability of any person under this Act shall be extinguished, reduced, or modified as the result of any proceeding in bankruptcy by or on behalf of a person or the person’s successor or assign.

## Subtitle B—Payments to States

### SEC. 111. PAYMENTS TO STATES.

(a) PAYMENTS.—

(1) IN GENERAL.—There are authorized to be appropriated amounts provided for under section 101(d)(2)(A) in each fiscal year to provide funds to each State to reimburse such State for amounts expended by the State for the treatment of individuals with tobacco-related illnesses or conditions.

(2) AMOUNT.—From the amount made available under section 101(d)(2)(A) for any fiscal year, each State shall receive the applicable percentage of such amount in accordance with the following table:

State	Applicable Percentage
Alabama .....	1.400
Alaska .....	0.400
Arizona .....	1.334
Arkansas .....	0.800
California .....	9.696
Colorado .....	1.204
Connecticut .....	1.612
Delaware .....	0.400
District of Columbia .....	0.600
Florida .....	4.977
Georgia .....	2.174

Hawaii .....	0.600
Idaho .....	0.400
Illinois .....	4.241
Indiana .....	1.780
Iowa .....	0.802
Kansas .....	0.800
Kentucky .....	1.575
Louisiana .....	1.734
Maine .....	0.800
Maryland .....	2.065
Massachusetts .....	3.571
Michigan .....	3.917
Minnesota .....	2.138
Mississippi .....	0.800
Missouri .....	1.930
Montana .....	0.400
Nebraska .....	0.600
Nevada .....	0.600
New Hampshire .....	0.600
New Jersey .....	3.193
New Mexico .....	0.600
New York .....	10.899
North Carolina .....	2.143
North Dakota .....	0.400
Ohio .....	4.463
Oklahoma .....	0.943
Oregon .....	1.076
Pennsylvania .....	5.202
Rhode Island .....	0.800
South Carolina .....	0.961
South Dakota .....	0.400
Tennessee .....	2.230
Texas .....	4.905
Utah .....	0.400
Vermont .....	0.400
Virginia .....	1.827
Washington .....	1.823
West Virginia .....	0.818
Wisconsin .....	1.919
Wyoming .....	0.200
American Samoa .....	0.009
N. Mariana Islands .....	0.002
Guam .....	0.007
U.S. Virgin Islands .....	0.005
Puerto Rico .....	0.428

1       (b) USE OF FUNDS.—

2               (1) DISCRETIONARY AMOUNTS.—A State may

3       use not to exceed 50 percent of the amount received

1 under this section in a fiscal year for any activities  
2 determined appropriate by the State.

3 (2) MANDATORY EXPENDITURES.—A State  
4 shall use not less than 50 percent of the amount re-  
5 ceived under this section in a fiscal year

6 (A) to carry out additional activities or  
7 provide additional services under—

8 (i) subject to subsection (d), the State  
9 program under title XIX of the Social Se-  
10 curity Act (42 U.S.C. 1396 et seq.);

11 (ii) the State program under title XXI  
12 of the Social Security Act (42 U.S.C.  
13 1397aa et seq.);

14 (iii) the State program under the ma-  
15 ternal and child health services block grant  
16 under title V of the Social Security Act (42  
17 U.S.C. 701 et seq.);

18 (iv) the community health center pro-  
19 gram under section 330 of the Public  
20 Health Service Act (42 U.S.C. 254b);

21 (v) programs administered within the  
22 State under the authority of the Substance  
23 Abuse and Mental Health Services Admin-  
24 istration;

1 (vi) the State program under the pre-  
2 ventive health services block grant under  
3 part A of title XIX of the Public Health  
4 Service Act (42 U.S.C. 300w et seq.);

5 (vii) the State program for temporary  
6 assistance to needy families funded under  
7 part A of title IV of the Social Security  
8 (42 U.S.C. 601 et seq.);

9 (viii) federally funded child welfare  
10 and abuse programs;

11 (ix) federally funded child care pro-  
12 grams operating in the State;

13 (x) programs to aid disabled children;

14 (xi) the State program under section  
15 17 of the Child Nutrition Act of 1966 (42  
16 U.S.C. 1786 et seq.);

17 (xii) federally funded child abuse pro-  
18 grams;

19 (xiii) the Head Start Act (42 U.S.C.  
20 9831 et seq.);

21 (xiv) the even start family literacy  
22 program carried out under part B of title  
23 I of the Elementary and Secondary Edu-  
24 cation Act of 1965 (20 U.S.C. 6361 et  
25 seq.);

1 (xv) the State program under part B  
2 of the Individuals With Disabilities Edu-  
3 cation Act (20 U.S.C. 1411 et seq.);

4 (xvi) the State program under the so-  
5 cial services block grant under title XX of  
6 Social Security Act (42 U.S.C. 1397 et  
7 seq.);

8 (xvii) the State program under the  
9 Community Services Block Grant Act (42  
10 U.S.C. 9901 et seq.);

11 (xviii) the State program under the  
12 Food Stamp Act of 1977 (7 U.S.C. 2011  
13 et seq.);

14 (xix) the State program under Low-  
15 Income Home Energy Assistance Act of  
16 1981 (42 U.S.C. 8621 et seq.); and

17 (xx) federally funded programs pro-  
18 viding assistance for general public edu-  
19 cation from kindergarten through 12th  
20 grade; and

21 (B) to carry out any other anti-tobacco or  
22 health activities determined appropriate by the  
23 Secretary.

24 (c) SUPPLEMENT NOT SUPPLANT.—Amounts re-  
25 ferred to in subsection (b)(2) shall be used to supplement



1 and not supplant other Federal, State and local funds pro-  
 2 vided for any of the programs described in subparagraphs  
 3 (A) and (B) of such subsection. Amounts provided to the  
 4 State under any of the provisions of law referred to in  
 5 such subparagraph shall not be reduced solely as a result  
 6 of the availability of funds under this section.

7 (d) NO INCLUSION OF FUNDS FOR PURPOSES OF  
 8 MEDICAID MATCH.—Amounts received under this section  
 9 and expended by a State under a program described in  
 10 subsection (b) may not be used for purposes of claiming  
 11 a State expenditure under title XIX (42 U.S.C. 1396 et  
 12 seq.) including expenditures for which an enhanced FMAP  
 13 is made under the fourth sentence of section 1905(b) of  
 14 such Act.

15 **SEC. 112. STATE BONUS PAYMENTS.**

16 (a) IN GENERAL.—The Secretary shall make a grant  
 17 pursuant to this section to each State for each year for  
 18 which the State is a high performing State.

19 (b) AMOUNT OF GRANT.—

20 (1) IN GENERAL.—Subject to paragraph (2),  
 21 the Secretary shall determine the amount of the  
 22 grant payable under this section to a high perform-  
 23 ing State for a year, which shall be based on the  
 24 score assigned to the State under subsection (d) for

1 the fiscal year that immediately precedes the year  
2 for which the bonus is being given.

3 (2) LIMITATION.—The amount payable to a  
4 State under this section for a year shall not exceed  
5 10 percent of the amount made available for pur-  
6 poses of this section under the table under section  
7 101(d)(2).

8 (c) FORMULA FOR MEASURING STATE PERFORM-  
9 ANCE.—Not later than 1 year after the date of the enact-  
10 ment of this Act, the Secretary shall develop a formula  
11 for measuring State performance in achieving the under-  
12 age reduction goals described in section 133(b) with re-  
13 spect to the State in the year involved. Such formula shall  
14 include the development and utilization of State-specific  
15 underage use baselines and targets under a standardized  
16 methodology developed by the Centers for Disease Control  
17 and Prevention.

18 (d) SCORING OF STATE PERFORMANCE; SETTING OF  
19 PERFORMANCE THRESHOLDS.—For each year, the Sec-  
20 retary shall use the formula developed under subsection  
21 (c) to assign a score to each eligible State for the fiscal  
22 year that immediately precedes the year for which the eli-  
23 gibility for the bonus is being determined.

24 (e) HIGH PERFORMING STATE.—The term “high  
25 performing State” means, with respect to a year, a State

1 whose score assigned pursuant to subsection (d) for the  
 2 year immediately preceding the year for which eligibility  
 3 for the bonus is being determined equals or exceeds the  
 4 performance threshold prescribed under such subsection  
 5 for such preceding year.

6 (f) AMOUNT OF AWARDS.—In determining the  
 7 amount of an award under this section for any year for  
 8 a high performing State, the Secretary shall award 20 per-  
 9 cent of the funds available for such fiscal year to States  
 10 that have adopted any or all of the following policies to  
 11 help meet their annual youth reduction targets:

12 (1) Further increasing the price of cigarettes  
 13 and other tobacco products.

14 (2) Exceeding Federal minors' access restric-  
 15 tions (including penalties for employees who sell to  
 16 minors, penalties for minors who purchase, and in-  
 17 creasing the legal purchase age).

18 (3) Increased State investments in anti-tobacco  
 19 programs (including counter-advertising, school and  
 20 community-based activities, and event sponsorship).

21 (4) Enactment of more stringent policies to re-  
 22 duce or eliminate exposures to environmental to-  
 23 bacco smoke (including bars, restaurants, bowling  
 24 alleys, bingo parlors, public transportation, public  
 25 arenas and stadia).

1           (5) Other activities or actions that the Sec-  
2       retary may deem appropriate.

3       (g) FUNDING.—The Secretary shall use amounts  
4 made available for each fiscal year under section  
5 101(d)(2)(A) to carry out this section. Amounts remaining  
6 available under this section at the end of the fiscal year  
7 involved shall be used in subsequent fiscal years to carry  
8 out this section.

## 9       **Subtitle C—Annual Youth Tobacco** 10           **Use Reductions**

### 11   **SEC. 131. PURPOSE.**

12       It is the purpose of this subtitle to achieve reductions  
13 in the proportion of underage consumers of tobacco prod-  
14 ucts through the imposition of financial deterrents relating  
15 to the use of tobacco products if certain underage tobacco-  
16 use reduction targets are not met.

### 17   **SEC. 132. CHILD TOBACCO USE SURVEYS.**

18       (a) ANNUAL PERFORMANCE SURVEY.—Not later  
19 than October 1, 1999, and annually thereafter, the Sec-  
20 retary shall conduct a survey to determine—

21           (1) the percentage of all young individuals who  
22       used a type of tobacco product within the 30-day pe-  
23       riod prior to the conduct of the survey; and

24           (2) the percentage of young individuals who  
25       identify each brand of each type of tobacco product

1 as the usual brand smoked or used within such 30-  
2 day period.

3 (b) YOUNG INDIVIDUALS.—For the purposes of this  
4 subtitle, the term “young individuals” means individuals  
5 who are under 18 years of age.

6 (c) BASELINE LEVEL.—

7 (1) IN GENERAL.—For the purposes of this  
8 subtitle, the term “baseline level” means, with re-  
9 spect to each type of tobacco product, the percentage  
10 of young individuals determined to have used such  
11 tobacco products in the annual performance survey  
12 described in subsection (a) completed by October 1,  
13 1999.

14 (2) MANUFACTURER’S BASELINE LEVEL.—For  
15 the purposes of this subtitle, the term “manufactur-  
16 er’s baseline level” means, with respect to each type  
17 of tobacco product, the percentage of young individ-  
18 uals determined to have identified a brand of each  
19 such tobacco product of such manufacturer as the  
20 usual brand smoked or used in the annual perform-  
21 ance survey described in subsection (a) completed by  
22 October 1, 1999.

23 (3) USE OF CERTAIN DATA OR METHODOLOGY.—  
24

1 (A) IN GENERAL.—For purposes of deter-  
2 mining the percentages under paragraphs (1)  
3 and (2), the Secretary may use the data col-  
4 lected through national surveys of young indi-  
5 viduals. Such surveys shall—

6 (i) be based on a nationally represent-  
7 ative sample of at least 20,000 completed  
8 interviews of young individuals;

9 (ii) be on a household-based in person  
10 survey;

11 (iii) measure the use of tobacco prod-  
12 uct within the past 30 days;

13 (iv) identify the usual brand of each  
14 type of tobacco product used within the  
15 past 30 days; and

16 (v) calculate the actual percentage re-  
17 ductions in underage the use of a type of  
18 tobacco product (or, in the case of the  
19 manufacturer-specific surcharge, the use of  
20 a type of tobacco product of a manufac-  
21 turer) based on the point estimates from  
22 the annual performance survey.

23 For purposes of clause (iv), point estimates  
24 shall be deemed acceptable for measuring com-  
25 pliance with percent reduction targets and for

1 calculating surcharges if the precision of esti-  
2 mates of the proportion of young individuals re-  
3 porting the use of a type of tobacco product (or,  
4 in the case of the manufacturer-specific sur-  
5 charge, the use of a type of tobacco product of  
6 a manufacturer) for the purpose of measuring  
7 compliance with percentage reduction targets  
8 and calculating surcharges without regard to  
9 the 95 percent confidence interval around such  
10 point estimates if the precision of estimates of  
11 the percentage of young individuals reporting  
12 use of a type of tobacco product (or, in the case  
13 of the manufacturer-specific surcharge, the use  
14 of a type of tobacco product of a manufacturer)  
15 is such that the 95 percent confidence interval  
16 around such point estimates is no more than  
17 plus or minus 1 percent.

18 (B) CONCLUSIVE ACCURATENESS.—A sur-  
19 vey using the methodology described in sub-  
20 paragraph (A) shall be deemed conclusively  
21 proper, correct and accurate for purposes of  
22 this Act. The Secretary may, by notice and  
23 comment rulemaking, subsequently adopt a dif-  
24 ferent survey methodology.

1           (C) FINAL DETERMINATION.—The deter-  
2 mination of the Secretary as to the amount and  
3 allocation of the surcharge under this subtitle  
4 shall be final and the manufacturer shall pay  
5 such surcharge within 30 days of the date on  
6 which the manufacturer is assessed. Such pay-  
7 ment shall be retained by the Secretary pending  
8 final judicial review of what, if any, change in  
9 the surcharge is appropriate.

10          (D) REVIEW.—The amount of any sur-  
11 charge paid under this subtitle shall be subject  
12 to judicial review by the United States Court of  
13 Appeals for the District of Columbia Circuit,  
14 based on the arbitrary and capricious standard  
15 of section 706 of title 5, United States Code.  
16 Notwithstanding any other provision of law, no  
17 court shall have the authority to stay any sur-  
18 charge payment due to the Secretary under this  
19 subtitle pending judicial review until the Sec-  
20 retary has made or failed to make a compliance  
21 determination, as described under this subtitle,  
22 that has adversely affected the person seeking  
23 the review.

24          (E) NONAPPLICABILITY.—Chapter 35 of  
25 title 44, United States Code, shall not apply to



1 information required for the purposes of carry-  
 2 ing out this subsection.

3 (F) AMENDMENT TO PUBLIC HEALTH  
 4 SERVICE ACT.—Section 308(d) of the Public  
 5 Health Service Act (42 U.S.C. 242m(d)) is  
 6 amended—

7 (i) by inserting after “or 307” the fol-  
 8 lowing: “, or a survey conducted under sec-  
 9 tion 132 of the KIDS Act,”; and

10 (ii) by inserting after “or 306” the  
 11 following: “, or in the course of a survey  
 12 conducted under section 132 of the KIDS  
 13 Act,”.

14 (d) ADMINISTRATION.—

15 (1) TECHNICAL ADJUSTMENTS.—The Secretary  
 16 may make technical changes in the manner in which  
 17 the surveys are conducted under this section to re-  
 18 flect improved methodology so long as adjustments  
 19 are made to ensure that the results of the surveys  
 20 are comparable from year to year.

21 (2) PARTICIPATION IN SURVEY.—Notwithstand-  
 22 ing any other provision of law, the Secretary may  
 23 conduct a survey under this section involving minors  
 24 if the results of such survey with respect to such mi-  
 25 nors are kept confidential and not disclosed.

1 (e) TOBACCO PRODUCT.—For the purposes of this  
 2 subtitle, cigarettes, cigars, little cigars, smokeless tobacco,  
 3 and roll-your-own tobacco shall each be considered as a  
 4 separate type of tobacco product.

5 **SEC. 133. REDUCTION IN UNDERAGE TOBACCO PRODUCT**  
 6 **USAGE.**

7 (a) ANNUAL DETERMINATION.—The Secretary shall  
 8 annually determine, based on the annual performance sur-  
 9 veys under section 132, whether the required percentage  
 10 reductions in underage use of tobacco products (as de-  
 11 scribed in subsection (b)) for a year have been achieved  
 12 for the year involved. Such determination shall be based  
 13 on the average annual percentage prevalence of the use  
 14 of tobacco products by young individuals (as determined  
 15 using the annual surveys conducted by the Secretary  
 16 under section 132) for the year involved as compared to  
 17 the baseline level.

18 (b) REQUIRED PERCENTAGE REDUCTION IN UNDER-  
 19 AGE USE OF TOBACCO PRODUCTS.—For purposes of this  
 20 section, the required percentage reduction from the base-  
 21 line level in the percentage of underage use of tobacco  
 22 products with respect to each tobacco product shall be as  
 23 follows:

24 (1) With respect to calendar year 2000, at least  
 25 15 percent.

1           (2) With respect to calendar year 2001, at least  
2       20 percent.

3           (3) With respect to calendar year 2002, at least  
4       25 percent.

5           (4) With respect to calendar year 2003, at least  
6       30 percent.

7           (5) With respect to calendar year 2004, at least  
8       40 percent.

9           (6) With respect to calendar year 2005, at least  
10      50 percent.

11          (7) With respect to calendar year 2006, at least  
12      55 percent.

13          (8) With respect to calendar year 2007, at least  
14      60 percent.

15          (9) With respect to calendar year 2008, and  
16      each subsequent calendar year, at least 65 percent.

17      (c) REQUIRED REDUCTION FOR MANUFACTURERS.—

18      With respect to the average percentage prevalence of the  
19      use of each manufacturer's brands of tobacco products by  
20      young individuals (as determined on the basis of the an-  
21      nual performance surveys conducted by the Secretary  
22      under section 132) for a year—

23           (1) each manufacturer which manufactured a  
24      brand or brands of tobacco product on or before the  
25      date of the enactment of this Act shall reduce the

percentage of young individuals who use such manufacturer's brand or brands as their usual brand in accordance with the percentage reductions described under subsection (b); and

(2) each manufacturer which manufactures a new brand or brands of tobacco products (a brand of tobacco product that was not manufactured prior to the date of enactment of this Act) after the date of the enactment of this Act shall ensure that the percentage prevalence of young individuals who use such manufacturer's brand or brands as their usual brand is equal to or less than the de minimis level described in section 134(b).

**SEC. 134. NONCOMPLIANCE.**

(a) INDUSTRY-WIDE PENALTY.—

(1) IN GENERAL.—If, with respect to a year, the Secretary determines that the required percentage reduction in underage use of a tobacco product has not been achieved as required under section 133(b), the Secretary shall impose an industry-wide penalty on the manufacturers of such product in an amount that is equal to the product of—

(A) the amount applicable under paragraph (2) for each unit of the tobacco product involved that is sold for consumer use by such

1 manufacturers in the year following the year in  
2 which the noncompliance occurs; and

3 (B) the number of percentage points by  
4 which the required percentage reduction in un-  
5 derage use of tobacco products under section  
6 133(b) for the year exceeds the actual reduction  
7 in the use of such products for the year (as de-  
8 termined under subsection (c)).

9 (2) APPLICABLE AMOUNT.—The amount appli-  
10 cable for purposes of paragraph (1)(A) for a year  
11 shall equal—

12 (A) for the first 10 percentage points by  
13 which the required percentage reduction in un-  
14 derage use of tobacco products under section  
15 133(b) for the year exceeds the actual reduction  
16 in the use of such products for the year (as de-  
17 termined under subsection (c)), \$.01 cent for  
18 each such excess percentage point;

19 (B) for each percentage point in excess of  
20 11 and less than 21 by which the required per-  
21 centage reduction in underage use of tobacco  
22 products under section 133(b) for the year ex-  
23 ceeds the actual reduction in the use of such  
24 products for the year (as determined under sub-

1           section (c)), \$.02 cents for each such excess  
2           percentage point; and

3           (C) for each percentage point in excess of  
4           20 by which the required percentage reduction  
5           in underage use of tobacco products under sec-  
6           tion 133(b) for the year exceeds the actual re-  
7           duction in the use of such products for the year  
8           (as determined under subsection (c)), \$.03  
9           cents for each such excess percentage point.

10          (3) INCREASED PENALTY FOR CONSECUTIVE  
11          FAILURES.—If the Secretary determines that the re-  
12          quired percentage reduction in underage use of a  
13          type of tobacco product has not been achieved as re-  
14          quired under section 133(b) in 3 or more consecutive  
15          years, the amount described in paragraph (2) shall  
16          be increased by a factor of 2.

17          (4) DE MINIMIS RULE.—The Secretary shall  
18          not impose a penalty on a manufacturer under para-  
19          graph (1) with respect to a type of tobacco product  
20          if the Secretary determines that the percentage of  
21          young individuals using such tobacco product (as de-  
22          termined using the annual surveys conducted by the  
23          Secretary under section 132) is less than 0.5 percent  
24          of the total number of young individuals determined  
25          to have used tobacco products in the year involved.

1           (5) PAYMENT.—An industry-wide penalty im-  
2       posed under this subsection for a tobacco product  
3       shall be paid by each manufacturer based on each  
4       such manufacturers market share for the type of to-  
5       bacco product involved.

6       (b) MANUFACTURER-SPECIFIC PENALTY.—

7           (1) IN GENERAL.—With respect to each manu-  
8       facturer for a year, if the Secretary determines that  
9       the required percentage reduction in underage use of  
10      a type of tobacco product has not been achieved by  
11      such manufacturer as required under section 134,  
12      the Secretary shall impose a penalty on the tobacco  
13      products of such type of such manufacturer in an  
14      amount that is equal to the product of—

15           (A) the amount applicable under para-  
16      graph (2) for each unit of the tobacco product  
17      involved that is sold for consumer use by such  
18      manufacturer in the year following the year in  
19      which the noncompliance occurs; and

20           (B) the number of percentage points by  
21      which the required percentage reduction in un-  
22      derage use of the type of tobacco product of  
23      such manufacturer under section 133(b) for the  
24      year exceeds the actual reduction in the use of

1           such product of such manufacturer for the year  
2           (as determined under subsection (c)).

3           (2) APPLICABLE AMOUNT.—The amount appli-  
4           cable for purposes of paragraph (1)(A) for a year  
5           shall equal—

6                   (A) for the first 10 percentage points by  
7                   which the required percentage reduction in un-  
8                   derage use of tobacco products under section  
9                   133(b) for the year exceeds the actual reduction  
10                  in the use of such products for the year (as de-  
11                  termined under subsection (c)), \$.01 cent for  
12                  each such excess percentage point;

13                   (B) for each percentage point in excess of  
14                   11 and less than 21 by which the required per-  
15                   centage reduction in underage use of tobacco  
16                   products under section 133(b) for the year ex-  
17                   ceeds the actual reduction in the use of such  
18                   products for the year (as determined under sub-  
19                   section (c)), \$.02 cents for each such excess  
20                   percentage point; and

21                   (C) for each percentage point in excess of  
22                   20 by which the required percentage reduction  
23                   in underage use of tobacco products under sec-  
24                   tion 133(b) for the year exceeds the actual re-  
25                   duction in the use of such products for the year



1 (as determined under subsection (c)), \$.03  
2 cents for each such excess percentage point.

3 (3) INCREASED PENALTY FOR CONSECUTIVE  
4 FAILURES.—If the Secretary determines that a par-  
5 ticular manufacturer has failed to meet the required  
6 percentage reduction in underage use of a type of to-  
7 bacco product (under section 133(b)) by at least 30  
8 percentage points for a period of at least 3 consecu-  
9 tive years, the amount applicable under paragraph  
10 (2) shall be, for each percentage point in excess of  
11 30 by which the required percentage reduction in  
12 underage use of tobacco products exceeds the actual  
13 reduction in the use of such products for the year  
14 (as determined under subsection (c)), \$.06 cents for  
15 each such excess percentage point.

16 (4) DE MINIMIS RULE.—The Secretary shall  
17 not impose a penalty on a manufacturer under this  
18 subsection for a type of tobacco product for a year  
19 if the Secretary determines that the percentage of  
20 young individuals identifying a brand of such to-  
21 bacco product of such manufacturer as the usual  
22 brand smoked or used for such year (as determined  
23 using the annual surveys conducted by the Secretary  
24 under section 132) is less than 0.5 percent of the

1       total number of young individuals determined to  
2       have used such tobacco products in such year.

3           (5) PAYMENT.—Penalties under this section  
4       shall be paid within 30 days of the date on which  
5       an assessment is made by the Secretary.

6       (c) ACTUAL PERCENTAGE REDUCTION IN UNDERAGE  
7       USE OF TOBACCO PRODUCTS.—For purposes of this sec-  
8       tion, the term “actual percentage reduction in underage  
9       use of tobacco products” means, with respect to a type  
10      of tobacco product involved for a year, the percentage re-  
11      duction, as determined by the Secretary using the annual  
12      performance surveys under section 132, in the use of such  
13      tobacco product by young individuals as compared to the  
14      baseline for such tobacco product under section 132(c).

15      (d) PROCEDURES.—In assessing penalties under this  
16      section, the Secretary may apply such statistical methods,  
17      including sampling, as may be appropriate to increase the  
18      accuracy of the estimates from the annual performance  
19      survey. In determining the industry-wide and manufac-  
20      turer-specific penalties under this section, the Secretary  
21      shall determine what confidence interval to use from the  
22      survey information made available from the annual per-  
23      formance survey under section 132.

24      (e) ADJUSTMENTS.—If for any calendar year the Sec-  
25      retary determines that the average annual percentage

1 prevalence of the use of tobacco products by young individ-  
2 uals (as determined using the annual surveys conducted  
3 by the Secretary under section 132) for the year involved  
4 is greater than the baseline level for such products (as  
5 determined under section 132(b)), the amount determined  
6 under subsections (a)(1) and (b)(1) shall be adjusted to  
7 reflect the—

8           (1) the percentage point amount applicable  
9           under section 133(b); and

10           (2) the percentage increase in the average an-  
11           nual percentage prevalence of the use of the tobacco  
12           products involved by individuals who are under 18  
13           years of age for the year (as determined under sec-  
14           tion 132) compared to the baseline level for such  
15           products (as determined under section 132(b)).

16       (f) PENALTIES NONDEDUCTIBLE.—The payment of  
17 penalties under this subtitle shall not be considered to be  
18 an ordinary and necessary expense in carrying on a trade  
19 or business for purposes of the Internal Revenue Code of  
20 1986 and shall not be deductible.

21       (g) USE OF AMOUNTS.—With respect to amounts  
22 paid by manufacturers under this section or section 135,  
23 the Secretary shall use such amounts as follows:

1           (1)  $\frac{1}{3}$  of such amounts shall be used for smok-  
2           ing cessation programs under chapter 2 of subtitle  
3           B of title III.

4           (2)  $\frac{1}{3}$  of such amounts shall be used for com-  
5           munity and school-based prevention programs under  
6           subtitle A, and counter advertising under chapter 1  
7           of subtitle B, of title III.

8           (3)  $\frac{1}{3}$  of such amounts shall be used for bio-  
9           medical and applied research under subtitle C of  
10          title III.

11          (h) JUDICIAL REVIEW.—A manufacturer of tobacco  
12          products may seek judicial review of any action under this  
13          subtitle only after the assessment involved has been paid  
14          by the manufacturer to the Department of the Treasury  
15          and only in the United States District Court for the Dis-  
16          trict of Columbia.

17          (i) LIMITATION ON PENALTIES FOR NONCOMPLI-  
18          ANCE.—With respect to penalties applicable for a year  
19          under this section, the sum of the penalties imposed shall  
20          not exceed \$10,000,000,000 per year, increased by the in-  
21          crease in the Consumer Price Index for the year involved.  
22          In complying with this subsection, the Secretary shall  
23          apply penalties under subsection (b) prior to the applica-  
24          tion of penalties under subsection (a).

1 **SEC. 135. ENFORCEMENT.**

2 (a) INITIAL PENALTY.—There is hereby imposed an  
3 initial penalty on the failure of any manufacturer to make  
4 any payment required under this subtitle within 30 days  
5 after the date on which such payment is due.

6 (b) AMOUNT OF PENALTY.—The amount of the pen-  
7 alty imposed by subsection (a) on any failure with respect  
8 to a manufacturer shall be the greater of \$100,000 or an  
9 amount equal to 2 percent of the penalty owed under sec-  
10 tion 134 for each day during the noncompliance period.

11 (c) NONCOMPLIANCE PERIOD.—For purposes of this  
12 section, the term “noncompliance period” means, with re-  
13 spect to any failure to make the surcharge payment re-  
14 quired under this subtitle, the period—

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

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

19 (d) LIMITATIONS.—No penalty shall be imposed by  
20 subsection (a) on any failure to make a surcharge payment  
21 under this subtitle during any period for which it is estab-  
22 lished to the satisfaction of the Secretary that none of the  
23 persons responsible for such failure knew or, exercising  
24 reasonable diligence, would have known, that such failure  
25 existed.

1   **TITLE II—REGULATION OF THE**  
2           **TOBACCO INDUSTRY**  
3   **Subtitle A—Food and Drug Admin-**  
4           **istration Jurisdiction and Gen-**  
5           **eral Authority**

6   **SEC. 201. STATEMENT OF GENERAL AUTHORITY.**

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

13   **SEC. 202. NONAPPLICABILITY TO OTHER DRUGS OR DE-**  
14           **VICES.**

15       Nothing in this Act, or an amendment made by this  
16 title, shall be construed to affect the regulation of drugs  
17 and devices that are not tobacco products by the Secretary  
18 under the Federal Food, Drug and Cosmetic Act.

19   **SEC. 203. CONFORMING AMENDMENTS TO CONFIRM JURIS-**  
20           **DICTION.**

21       (a) DEFINITIONS.—

22           (1) DRUG.—Section 201(g)(1) of the Federal  
23 Food, Drug, and Cosmetic Act (21 U.S.C. 321  
24 (g)(1)) is amended by striking “and (D)” and in-  
25 serting “(D) nicotine in tobacco products, and (E)”.

1           (2) DEVICE.—Section 201(h) of the Federal  
2       Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))  
3       is amended—

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

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

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

10       “(4) nicotine-containing tobacco products, and”.

11       (3) ADDITIONAL DEFINITIONS.—Section 201 of  
12       the Federal Food, Drug and Cosmetic Act (21  
13       U.S.C. 321) is amended by adding at the end the  
14       following:

15       “(kk) The term ‘cigarette’ means any product that  
16       contains nicotine, is intended to be burned under ordinary  
17       conditions of use, and consists of—

18           “(1) any roll of tobacco wrapped in paper or in  
19       any substance not containing tobacco; or

20           “(2) any roll of tobacco wrapped in any sub-  
21       stance containing tobacco which, because of its ap-  
22       pearance, the type of tobacco used in the filler, or  
23       its packaging and labeling, is likely to be offered to,  
24       or purchased by, consumers as a cigarette described  
25       in paragraph (1).

1       “(ll) The term ‘cigarette tobacco’ means any product  
2 that consists of loose tobacco that contains or delivers nic-  
3 otine and is intended for use by consumers in a cigarette.  
4 Unless otherwise stated, the requirements for cigarettes  
5 shall also apply to cigarette tobacco.

6       “(mm) The term ‘cigar’ means any roll of tobacco  
7 wrapped in leaf tobacco or in any substance containing  
8 tobacco (other than any roll of tobacco that is a cigarette  
9 or little cigar with the meaning of paragraph (kk) or (oo).

10       “(nn) The term ‘distributor’ with respect to a tobacco  
11 product means any person who furthers the distribution  
12 of cigarette or smokeless tobacco, whether domestic or im-  
13 ported, at any point from the original place of manufac-  
14 ture to the person who sells or distributes the product to  
15 individuals for personal consumption. Common carriers  
16 shall not be considered distributors for purposes of this  
17 Act.

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

23       “(pp) The term ‘manufacturer’ means any person, in-  
24 cluding any repacker or relabeler, who manufactures, fab-  
25 ricates, assembles, processes, packs, or labels a tobacco



1 product. Any successor or assign of a manufacturer, as  
2 well as any person affiliated with the manufacturer, shall  
3 have all of the manufacturer's responsibilities and liabil-  
4 ities under this Act.

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

8 “(rr) The term ‘package’ means the innermost sealed  
9 contained, irrespective of the material from which such  
10 container is made, in which a tobacco product is placed  
11 by the manufacturer and in which such tobacco product  
12 is offered for sale to a member of the general public.

13 “(ss) The term ‘person’ means a firm, partnership,  
14 association, corporation, legal representative, trustee, re-  
15 ceiver or any other legally recognized entity.

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

20 “(uu) The term ‘point-of-sale’ means any location at  
21 which a consumer can purchase or otherwise obtain to-  
22 bacco products for personal consumption.

23 “(vv) The term ‘retailer’ means any person who sells  
24 tobacco products to individuals for personal consumption

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

3 “(ww) The term ‘roll-your-own’ means any tobacco  
 4 which, because of its appearance, type, packaging, or la-  
 5 beling, is suitable for use and likely to be offered to, or  
 6 purchased by, consumers as tobacco for making cigarettes.

7 “(xx) The term ‘smokeless tobacco’ means any prod-  
 8 uct that consists of cut, ground, powdered or leaf tobacco  
 9 that contains nicotine and that is intended to be placed  
 10 in the oral or nasal cavity.

11 “(yy) The term ‘tobacco product’ means any product  
 12 made of or derived from tobacco leaf for human consump-  
 13 tion, including, but not limited to, cigarettes, cigarillos,  
 14 cigarette tobacco, cigars, little cigars, pipe tobacco, smoke-  
 15 less tobacco, and roll-your-own tobacco.”.

16 (4) COMBINATION OF PRODUCTS.—Section  
 17 503(g) of the Federal Food, Drug, and Cosmetic Act  
 18 (21 U.S.C. 353(g)) is amended by inserting “(in-  
 19 cluding any tobacco product)” after “products” the  
 20 first place that such appears.

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

1       “(x) The manufacture, labeling, distribution, adver-  
 2       tising and sale of any adulterated or misbranded tobacco  
 3       product in violation of—

4               “(1) regulations issued under this Act; or

5               “(2) the KIDS Act, or regulations issued under  
 6       such Act.”.

7       (c) ADULTERATED DRUGS AND DEVICES.—

8               (1) IN GENERAL.—Section 501 of the Federal  
 9       Food, Drug, and Cosmetic Act (21 U.S.C. 351) is  
 10       amended by adding at the end the following:

11       “(j) If it is a tobacco product and it does not comply  
 12       with the provisions of subchapter D of this chapter or the  
 13       KIDS Act.”.

14               (2) MISBRANDING.—Section 502(q) of the Fed-  
 15       eral Food, Drug, and Cosmetic Act (21 U.S.C.  
 16       352(q)) is amended—

17                       (A) by striking “or (2)” and inserting in  
 18                       lieu thereof “(2)”; and

19                       (B) by inserting before the period the fol-  
 20                       lowing: “, or (3) in the case of a tobacco prod-  
 21                       uct, it is sold, distributed, advertised, labeled,  
 22                       or used in violation of this Act or the KIDS  
 23                       Act, or regulations prescribed under such  
 24                       Acts”.

1 (d) RESTRICTED DEVICE.—Section 520(e) of the  
 2 Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
 3 360j(e)) is amended—

4 (1) in paragraph (1), by striking “or use—”  
 5 and inserting “or use, including restrictions on the  
 6 access to, and the advertising and promotion of, to-  
 7 bacco products—”; and

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

9 “(3) Tobacco products are a restricted device under  
 10 this paragraph.”.

11 (e) REGULATORY AUTHORITY.—Section 503(g) (21  
 12 U.S.C. 353(g)) is amended by adding at the end the fol-  
 13 lowing:

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

18 **SEC. 204. GENERAL RULE.**

19 Section 513(a)(1)(B) of the Federal Food, Drug and  
 20 Cosmetic Act (21 U.S.C. 360c(a)(1)(B)) is amended by  
 21 adding at the end the following: “The sale of tobacco prod-  
 22 ucts to adults that comply with performance standards es-  
 23 tablished for these products under section 514 and other  
 24 provisions of this Act and any regulations prescribed

1 under this Act shall not be prohibited by the Secretary,  
 2 notwithstanding sections 502(j), 516, and 518.”.

3 **SEC. 205. SAFETY AND EFFICACY STANDARD AND RECALL**  
 4 **AUTHORITY.**

5 (a) SAFETY AND EFFICACY STANDARD.—Section  
 6 513(a) (21 U.S.C. 360e(a)) is amended—

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

13 (2) in paragraph (2)—

14 (A) by redesignating subparagraphs (A),  
 15 (B) and (C) as clauses (i), (ii) and (iii), respec-  
 16 tively;

17 (B) by striking “(2) For” and inserting  
 18 “(2)(A) For”; and

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

20 “(B) For purposes of paragraph (1)(B), subsections  
 21 (c)(2)(C), (d)(2)(B), (e)(2)(A), (f)(3)(B)(i), and  
 22 (f)(3)(C)(i), and sections 514, 519(a), 520(e), and 520(f),  
 23 the safety and effectiveness of a device that is a tobacco  
 24 product need not be found if the Secretary finds that the  
 25 action to be taken under any such provision would achieve

1 the best public health result. The finding as to whether  
 2 the best public health result has been achieved shall be  
 3 determined with respect to the risks and benefits to the  
 4 population as a whole, including users and non-users of  
 5 the tobacco product, and taking into account—

6 “(i) the increased or decreased likelihood that  
 7 existing consumers of tobacco products will stop  
 8 using such products; and

9 “(ii) the increased or decreased likelihood that  
 10 those who do not use tobacco products will start  
 11 using such products.”.

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

## 17 **Subtitle B—Regulation of Tobacco** 18 **Products**

### 19 **SEC. 211. PERFORMANCE STANDARDS.**

20 Section 514(a) of the Federal Food, Drug, and Cos-  
 21 metic Act (21 U.S.C. 60d(a)) is amended—

22 (1) in paragraph (2), by striking “device” and  
 23 inserting “nontobacco product device”;

24 (2) by redesignating paragraphs (3) and (4) as  
 25 paragraphs (6) and (7), respectively; and

1           (3) by inserting after paragraph (2) the follow-  
2       ing:

3       “(3) The Secretary may adopt a performance stand-  
4       ard under section 514(a)(2) for a tobacco product regard-  
5       less of whether the product has been classified under sec-  
6       tion 513. Such standard may—

7           “(A) include provisions to achieve the best pub-  
8       lic health result;

9           “(B) where necessary to achieve the best public  
10      health result, include—

11           “(i) provisions respecting the construction,  
12           components, constituents, ingredients, and  
13           properties of the tobacco product device, includ-  
14           ing the reduction or elimination (or both) of  
15           nicotine and the other components, ingredients,  
16           and constituents of the tobacco product, its  
17           components and its by-products, based upon the  
18           best available technology;

19           “(ii) provisions for the testing (on a sam-  
20           ple basis or, if necessary, on an individual  
21           basis) of the tobacco product device or, if it is  
22           determined that no other more practicable  
23           means are available to the Secretary to assure  
24           the conformity of the tobacco product device to  
25           such standard, provisions for the testing (on a

1 sample basis or, if necessary, on an individual  
2 basis) by the Secretary or by another person at  
3 the direction of the Secretary;

4 “(iii) provisions for the measurement of  
5 the performance characteristics of the tobacco  
6 product device;

7 “(iv) provisions requiring that the results  
8 of each test or of certain tests of the tobacco  
9 product device required to be made under  
10 clause (ii) demonstrate that the tobacco product  
11 device is in conformity with the portions of the  
12 standard for which the test or tests were re-  
13 quired; and

14 “(v) a provision that the sale and distribu-  
15 tion of the tobacco product device be restricted  
16 but only to the extent that the sale and dis-  
17 tribution of a tobacco product device may other-  
18 wise be restricted under this Act; and

19 “(C) where appropriate, require the use and  
20 prescribe the form and content of labeling for the  
21 use of the tobacco product device.

22 “(4) Not later than 1 year after the date of enact-  
23 ment of this paragraph, the Secretary (acting through the  
24 Commissioner of Food and Drugs) shall establish a Sci-  
25 entific Advisory Committee to evaluate whether a level or



1 range of levels exists at which nicotine yields do not  
 2 produce drug-dependence. The Advisory Committee shall  
 3 also review any other safety, dependence or health issue  
 4 assigned to it by the Secretary. The Secretary need not  
 5 promulgate regulations to establish the Committee.”.

6 **SEC. 212. APPLICATION OF FEDERAL FOOD, DRUG, AND**  
 7 **COSMETIC ACT TO TOBACCO PRODUCTS.**

8 (a) TOBACCO PRODUCTS REGULATION.—Chapter V  
 9 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
 10 351 et seq.) is amended by adding at the end the follow-  
 11 ing:

12 “SUBCHAPTER F—TOBACCO PRODUCT DEVELOP-  
 13 OPMENT, MANUFACTURING, AND ACCESS  
 14 RESTRICTIONS, LICENSING, AND ANTI-  
 15 SMUGGLING

16 **“PART A—TOBACCO PRODUCT DEVELOPMENT,**  
 17 **MANUFACTURING, AND ACCESS RESTRICTIONS**

18 **“SEC. 570. PROMULGATION OF REGULATIONS.**

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

1 **“SEC. 571. MAIL-ORDER SALES.**

2 “(a) IN GENERAL.—Not later than 2 years after the  
3 date of enactment of this subchapter, the Secretary shall  
4 review and determine whether persons under the age of  
5 18 years are obtaining tobacco products by means of the  
6 mail.

7 “(b) RESTRICTIONS.—Based solely upon the review  
8 conducted under subsection (a), the Secretary may take  
9 regulatory and administrative action to restrict or elimi-  
10 nate mail order sales of tobacco products.

11 **“SEC. 572. TOBACCO PRODUCT WARNINGS AND PACKAG-**  
12 **ING.**

13 “(a) CIGARETTE WARNINGS.—

14 “(1) IN GENERAL.—

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

21 “WARNING: Cigarettes Are Addictive.

22 “WARNING: Tobacco Smoke Can Harm  
23 Your Children.

24 “WARNING: Cigarettes Cause Fatal Lung  
25 Disease.

26 “WARNING: Cigarettes Cause Cancer.

1           “WARNING: Cigarettes Cause Strokes  
2           And Heart Disease.

3           “WARNING: Smoking During Pregnancy  
4           Can Harm Your Baby.

5           “WARNING: Smoking Can Kill You.

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

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

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

17                 “WARNING: Cigarettes Are Addictive.

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

20                 “WARNING: Cigarettes Cause Fatal Lung  
21                 Disease.

22                 “WARNING: Cigarettes Cause Cancer.

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

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

3                   “WARNING: Smoking Can Kill You.

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

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

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

17                  “(2) REQUIREMENTS FOR LABELING.—

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

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

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

1 of paragraph (1) shall occupy the entire front  
2 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 appear in a conspicuous and prominent  
7 format and location at the top of each adver-  
8 tisement within the trim area and shall occupy  
9 not less than 20 percent of the area of the ad-  
10 vertisement involved.

11 “(B) TYPE, COLOR AND FORMAT.—

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

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

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

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

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

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

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

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

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

18 Within the 20 percent requirement de-  
19 scribed in subparagraph (A), the Secretary  
20 may revise the required type sizes if the  
21 Secretary determines that such revisions  
22 will enhance public health protections.

23 “(ii) COLOR.—All the letters in the  
24 label under this subparagraph shall appear  
25 in conspicuous and legible type, in contrast

1 by typography, layout, or color with all  
2 other printed material on the package, and  
3 be printed in an alternating black-on-white  
4 and white-on-black format as determined  
5 appropriate by the Secretary.

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

18 “(C) LANGUAGE REQUIREMENT.—The  
19 label statements required under paragraph  
20 (1)(B) shall be in English, except that—

21 “(i) in the case of an advertisement  
22 that appears in a newspaper, magazine, pe-  
23 riodical or other publication that is not in  
24 English, such statements shall appear in



1 the predominant language of the publica-  
2 tion; or

3 “(ii) in the case of any other adver-  
4 tisement that is not in English, such state-  
5 ments shall appear in the same language  
6 as that principally used in the advertise-  
7 ment.

8 “(4) ROTATION OF LABEL STATEMENTS.—

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

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

1           “(C) APPROVAL OF PLANS.—The Sec-  
 2           retary shall review each plan submitted by a  
 3           manufacturer, importer, distributor or retailer  
 4           of cigarettes under this paragraph and approve  
 5           such plan if the plan will provide for the equal  
 6           distribution and display on packaging and the  
 7           rotation required in advertising under this para-  
 8           graph and if such plan assures that all of the  
 9           labels required under subparagraphs (A) and  
 10          (B) will be displayed by the manufacturer, im-  
 11          porter, distributor or retailer at the same time.

12          “(b) SMOKELESS TOBACCO PRODUCTS.—

13           “(1) IN GENERAL.—

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

20           “WARNING: This Product Can Cause  
 21           Mouth Cancer.

22           “WARNING: This Product Can Kill You.

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

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

3                   “WARNING: This Product Contains Can-  
4                   cer-Causing Chemicals.

5                   “WARNING: Smokeless Tobacco Is Ad-  
6                   dictive.

7                   “(B) ADVERTISING.—It shall be unlawful  
8                   for any manufacturer, importer, distributor or  
9                   retailer of smokeless tobacco products to adver-  
10                  tise or cause to be advertised any smokeless to-  
11                  bacco product unless the advertising bears, in  
12                  accordance with the requirements of this sub-  
13                  section, one of the following labels:

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

16                  “WARNING: This Product Can Kill You.

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

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

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

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

1           “(C) ADDITIONAL WARNINGS.—Beginning  
 2           on the date that is 18 months after the date of  
 3           enactment of this subchapter, the Secretary  
 4           may substitute for, or require warnings in addi-  
 5           tion to, those otherwise required under subpara-  
 6           graphs (A) and (B) if the Secretary determines  
 7           that such warnings would be more effective in  
 8           deterring the use of smokeless tobacco products.

9           “(2) REQUIREMENTS FOR LABELING.—

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

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

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

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

9           “(c) OTHER TOBACCO PRODUCTS.—The Secretary  
 10          shall prescribe such regulations as may be necessary to  
 11          establish warning labels for other tobacco product packag-  
 12          ing, labeling and advertising.

13          “(d) RULES OF CONSTRUCTION.—

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

23                 “(2) UNFAIR ACTS.—Nothing in this section  
 24                 (other than the requirements of subsections (a), (b)  
 25                 and (c)) shall be construed to limit or restrict the

1 authority of the Federal Trade Commission with re-  
 2 spect to unfair or deceptive acts or practices in the  
 3 advertising of tobacco products.

4 “(e) LIMITED PREEMPTION.—

5 “(1) STATE AND LOCAL ACTION.—No warning  
 6 label with respect to tobacco products, or any other  
 7 tobacco product for which warning labels have been  
 8 required under this section, other than the warning  
 9 labels required under this Act, shall be required by  
 10 any State or local statute or regulation to be in-  
 11 cluded on any package of a tobacco product.

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

16 “(f) VIOLATION OF SECTION.—Any tobacco product  
 17 that is in violation of this section shall be deemed to be  
 18 misbranded.

19 **“SEC. 573. GENERAL RESPONSIBILITIES OF MANUFACTUR-**  
 20 **ERS, DISTRIBUTORS AND RETAILERS.**

21 “Each manufacturer, distributor, and retailer shall  
 22 ensure that the tobacco products it manufactures, labels,  
 23 advertises, packages, distributes, sells, or otherwise holds  
 24 for sale comply with all applicable requirements of this  
 25 Act.

1 **“SEC. 574. DISCLOSURE AND REPORTING OF TOBACCO AND**  
2 **NONTOBACCO INGREDIENTS AND CONSTITU-**  
3 **ENTS.**

4 “(a) DISCLOSURE OF ALL INGREDIENTS.—

5 “(1) IMMEDIATE AND ANNUAL DISCLOSURE.—

6 Not later than 30 days after the date of enactment  
7 of this subchapter, and annually thereafter, each  
8 manufacturer of a tobacco product shall submit to  
9 the Secretary an ingredient list for each brand of to-  
10 bacco product it manufactures that contains the in-  
11 formation described in paragraph (2).

12 “(2) REQUIREMENTS.—The list described in  
13 paragraph (1) shall, with respect to each brand or  
14 variety of tobacco product of a manufacturer, in-  
15 clude—

16 “(A) a list of all ingredients, constituents,  
17 substances, and compounds that are found in or  
18 added to the tobacco or tobacco product (in-  
19 cluding the paper, filter, or packaging of the  
20 product if applicable) in the manufacture of the  
21 tobacco product, for each brand or variety of to-  
22 bacco product so manufactured, including, if  
23 determined necessary by the Secretary, any ma-  
24 terial added to the tobacco used in the product  
25 prior to harvesting;

1           “(B) the quantity of the ingredients, con-  
2           stituents, substances, and compounds that are  
3           listed under subparagraph (A) in each brand or  
4           variety of tobacco product;

5           “(C) the nicotine content of the product,  
6           measured in milligrams of nicotine;

7           “(D) for each brand or variety of ciga-  
8           rettes—

9                   “(i) the filter ventilation percentage  
10                   (the level of air dilution in the cigarette as  
11                   provided by the ventilation holes in the fil-  
12                   ter, described as a percentage);

13                   “(ii) the pH level of the smoke of the  
14                   cigarette; and

15                   “(iii) the tar, unionized (free) nico-  
16                   tine, and carbon monoxide delivery level  
17                   and any other smoking conditions estab-  
18                   lished by the Secretary, reported in milli-  
19                   grams of tar, nicotine, and carbon mon-  
20                   oxide per cigarette;

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

23                   “(i) the pH level of the tobacco;



1 “(ii) the moisture content of the to-  
 2 bacco expressed as a percentage of the  
 3 weight of the tobacco; and

4 “(iii) the nicotine content—

5 “(I) for each gram of the prod-  
 6 uct, measured in milligrams of nico-  
 7 tine;

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

10 “(III) with respect to unionized  
 11 (free) nicotine, expressed as a percent-  
 12 age per gram of the tobacco and ex-  
 13 pressed in milligrams per gram of the  
 14 tobacco; and

15 “(F) any other information determined ap-  
 16 propriate by the Secretary.

17 “(3) METHODS.—The Secretary shall have the  
 18 authority to promulgate regulations to establish the  
 19 methods to be used by manufacturers in making the  
 20 determinations required under paragraph (2).

21 “(4) OTHER TOBACCO PRODUCTS.—The Sec-  
 22 retary shall prescribe such regulations as may be  
 23 necessary to establish information disclosure proce-  
 24 dures for other tobacco products.

25 “(b) SAFETY ASSESSMENTS.—

1 “(1) APPLICATION TO NEW INGREDIENTS.—

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

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

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

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

4           “(2) APPLICATION TO OTHER INGREDIENTS.—

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

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

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

24                 “(B) demonstrate that there is a reason-  
25                 able certainty among experts qualified by sci-

entific training and experience who are consulted, that the ingredient, constituent, substance, or compound will not present any risk to consumers or the public in the quantities used under the intended conditions of use.

“(c) PROHIBITION.—

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

“(A) if no safety assessment has been submitted by the manufacturer for the ingredient, constituent, substance, or compound as otherwise required under this section; or

“(B) if the Secretary finds that the manufacturer has failed to demonstrate the safety of the ingredient, constituent, substance, or compound that was the subject of the assessment under paragraph (2).

“(2) REVIEW OF ASSESSMENTS.—

“(A) GENERAL REVIEW.—Not later than 180 days after the receipt of a safety assessment under subsection (b), the Secretary shall

1 review the findings contained in such assess-  
2 ment and approve or disapprove of the safety  
3 of the ingredient, constituent, substance, or  
4 compound that was the subject of the assess-  
5 ment. The Secretary may, for good cause, ex-  
6 tend the period for such review. The Secretary  
7 shall provide notice to the manufacturer of an  
8 action under this subparagraph.

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

19 “(d) RIGHT TO KNOW; FULL DISCLOSURE OF IN-  
20 GREDIENTS TO THE PUBLIC.—

21 “(1) IN GENERAL.—Except as provided in para-  
22 graph (3), a package of a tobacco product shall dis-  
23 close all ingredients, constituents, substances, or  
24 compounds contained in the product in accordance

1 with regulations promulgated under section 701(a)  
 2 by the Secretary.

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

8 “(A) the percentage that is domestic to-  
 9 bacco; and

10 “(B) the percentage that is foreign to-  
 11 bacco.

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

20 **“SEC. 575. REDUCED RISK PRODUCTS.**

21 “(a) PROHIBITION.—

22 “(1) IN GENERAL.—No manufacturer, distribu-  
 23 tor or retailer of tobacco products may make any di-  
 24 rect or implied statement in advertising or on a  
 25 product package that could reasonably be inter-

1       preted to state or imply a reduced health risk associ-  
2       ated with a tobacco product unless the manufacturer  
3       demonstrates to the Secretary, in such form as the  
4       Secretary may require, that based on the best avail-  
5       able scientific evidence the product significantly re-  
6       duces the overall health risk to the public when com-  
7       pared to other tobacco products.

8               “(2) SUBMISSION TO SECRETARY.—Prior to  
9       making any statement described in paragraph (1), a  
10      manufacturer, distributor or retailer shall submit  
11      such statement to the Secretary, who shall review  
12      such statement to ensure its accuracy and, in the  
13      case of advertising, to prevent such statement from  
14      increasing, or preventing the contraction of, the size  
15      of the overall market for tobacco products.

16             “(b) DETERMINATION BY SECRETARY.—If the Sec-  
17      retary determines that a statement described in subsection  
18      (a)(2) is permissible because the tobacco product does  
19      present a significantly reduced overall health risk to the  
20      public, the Secretary may permit such statement to be  
21      made.

22             “(c) DEVELOPMENT OR ACQUISITION OF REDUCED  
23      RISK TECHNOLOGY.—

24               “(1) IN GENERAL.—Any manufacturer that de-  
25      velops or acquires any technology that the manufac-

1       turer reasonably believes will reduce the risk from  
2       tobacco products shall notify the Secretary of the de-  
3       velopment or acquisition of the technology. Such no-  
4       tice shall be in such form and within such time as  
5       the Secretary shall require.

6               “(2) CONFIDENTIALITY.—With respect to any  
7       technology described in paragraph (1) that is in the  
8       early stages of development (as determined by the  
9       Secretary), the Secretary shall establish protections  
10      to ensure the confidentiality of any proprietary in-  
11      formation submitted to the Secretary under this sub-  
12      section during such development.

13   **“SEC. 576. ACCESS TO COMPANY INFORMATION.**

14           “(a) COMPLIANCE PROCEDURES.—Each manufac-  
15   turer of tobacco products shall establish procedures to en-  
16   sure compliance with this Act.

17           “(b) REQUIREMENT.—In addition to any other dis-  
18   closure obligations under this Act, the KIDS Act, or any  
19   other law, each manufacturer of tobacco products shall,  
20   not later than 90 days after the date of the enactment  
21   of the KIDS Act and thereafter as required by the Sec-  
22   retary, disclose to the Secretary all nonpublic information  
23   and research in its possession or control relating to the  
24   addiction or dependency, or the health or safety of tobacco  
25   products, including (without limitation) all research relat-



1 ing to processes to make tobacco products less hazardous  
 2 to consumers and the research and documents described  
 3 in subsection (c).

4 “(c) RESEARCH AND DOCUMENTS.—The documents  
 5 described in this section include any documents concerning  
 6 tobacco product research relating to—

7 “(1) nicotine, including—

8 “(A) the interaction between nicotine and  
 9 other components in tobacco products including  
 10 ingredients in the tobacco and smoke compo-  
 11 nents;

12 “(B) the role of nicotine in product design  
 13 and manufacture, including product charters,  
 14 and parameters in product development, the to-  
 15 bacco blend, filter technology, and paper;

16 “(C) the role of nicotine in tobacco leaf  
 17 purchasing;

18 “(D) reverse engineering activities involv-  
 19 ing nicotine (such as analyzing the products of  
 20 other companies);

21 “(E) an analysis of nicotine delivery; and

22 “(F) the biology, psychopharmacology and  
 23 any other health effects of nicotine;

24 “(2) other ingredients, including—

1           “(A) the identification of ingredients in to-  
2           bacco products and constituents in smoke, in-  
3           cluding additives used in product components  
4           such as paper, filter, and wrapper;

5           “(B) any research on the health effects of  
6           ingredients; and

7           “(C) any research or other information ex-  
8           plaining what happens to ingredients when they  
9           are heated and burned;

10          “(3) less hazardous or safer products, including  
11          any research or product development information on  
12          activities involving reduced risk, less hazardous, low-  
13          tar or reduced-tar, low-nicotine or reduced-nicotine  
14          or nicotine-free products; and

15          “(4) tobacco product advertising, marketing  
16          and promotion, including—

17               “(A) documents related to the design of  
18               advertising campaigns, including the desired de-  
19               mographics for individual products on the mar-  
20               ket or being tested;

21               “(B) documents concerning the age of ini-  
22               tiation of tobacco use, general tobacco use be-  
23               havior, beginning smokers, pre-smokers, and  
24               new smokers;

1                   “(C) documents concerning the effects of  
2                   advertising; and

3                   “(D) documents concerning future market-  
4                   ing options or plans in light of the requirements  
5                   and regulations to be imposed under this sub-  
6                   chapter or the KIDS Act.

7           “(d) **AUTHORITY OF SECRETARY.**—With respect to  
8 tobacco product manufacturers, the Secretary shall have  
9 the same access to records and information and inspection  
10 authority as is available with respect to manufacturers of  
11 other medical devices.

12   **“SEC. 577. OVERSIGHT OF TOBACCO PRODUCT MANUFAC-**  
13                   **TURING.**

14           “The Secretary shall by regulation prescribe good  
15 manufacturing practice standards for tobacco products.  
16 Such regulations shall be modeled after good manufactur-  
17 ing practice regulations for medical devices, food, and  
18 other items under section 520(f). Such standards shall be  
19 directed specifically toward tobacco products, and shall in-  
20 clude—

21                   “(1) a quality control system, to ensure that to-  
22                   bacco products comply with such standards;

23                   “(2) a system for inspecting tobacco product  
24                   materials to ensure their compliance with such  
25                   standards;

1           “(3) requirements for the proper handling of  
2 finished tobacco products;

3           “(4) strict tolerances for pesticide chemical resi-  
4 dues in or on tobacco or tobacco product commod-  
5 ities in the possession of the manufacturer, except  
6 that nothing in this paragraph shall be construed to  
7 affect any authority of the Environmental Protection  
8 Agency;

9           “(5) authority for officers or employees of the  
10 Secretary to inspect any factory, warehouse, or other  
11 establishment of any tobacco product manufacturer,  
12 and to have access to records, files, papers, proc-  
13 esses, controls and facilities related to tobacco prod-  
14 uct manufacturing, in accordance with appropriate  
15 authority and rules promulgated under this Act; and

16           “(6) a requirement that the tobacco product  
17 manufacturer maintain such files and records as the  
18 Secretary may specify, as well as that the manufac-  
19 turer report to the Secretary such information as  
20 the Secretary shall require, in accordance with sec-  
21 tion 519.

22 **“SEC. 578. PRESERVATION OF STATE AND LOCAL AUTHOR-**  
23 **ITY.**

24           “Notwithstanding section 521 and except as other-  
25 wise provided for in section 572(e), nothing in this sub-

1 chapter shall be construed as prohibiting a State or local-  
 2 ity from imposing requirements, prohibitions, penalties or  
 3 other measures to further the purposes of this subchapter  
 4 that are in addition to the requirements, prohibitions, or  
 5 penalties required under this subchapter. State and local  
 6 governments may impose additional tobacco product con-  
 7 trol measures to further restrict or limit the use of such  
 8 products.”.

9 **SEC. 213. FUNDING.**

10 (a) AUTHORIZATION OF APPROPRIATIONS.—There  
 11 are authorized to be appropriated amounts provided under  
 12 section 101(d)(2)(C) to carry out this subtitle (and the  
 13 amendments made by this subtitle).

14 (b) TRIGGER.—No expenditures shall be made under  
 15 this subtitle (or the amendments made by this subtitle)  
 16 during any fiscal year in which the annual amount appro-  
 17 priated for the Food and Drug Administration is less than  
 18 the amount so appropriated for the prior fiscal year.

19 **SEC. 214. REPEALS.**

20 The following provisions of law shall be repealed:

21 (1) The Federal Cigarette Labeling and Adver-  
 22 tising Act (15 U.S.C. 1331 et seq.), except for sec-  
 23 tions 5(d) (1) and (2) and 6.

1           (2) The Comprehensive Smokeless Tobacco  
2           Health Education Act of 1986 (15 U.S.C. 4401 et  
3           seq.), except for sections 3(f) and 8(a) and (b).

4           (3) The Comprehensive Smoking Education Act  
5           of 1964 (Public law 98–474).

6       **Subtitle     C—Manufacturer     and**  
7       **Product Seller Licensing and**  
8       **Anti-Smuggling**

9       **SEC. 221. DEFINITIONS.**

10       In this subtitle:

11           (1) CONTRABAND TOBACCO PRODUCT.—The  
12           term “contraband tobacco product” means any to-  
13           bacco product that is manufactured, sold or offered  
14           for sale, shipped, delivered, transferred, or possessed  
15           in violation of this subtitle, chapter 52 of the Inter-  
16           nal Revenue Code of 1986, or Chapter 114 of Title  
17           18, United States Code, or any regulations issued  
18           under any such provision.

19           (2) DEALER.—The term “dealer” means any  
20           person lawfully engaged in the business of selling to-  
21           bacco products.

22           (3) ENGAGED IN THE BUSINESS.—The term  
23           “engaged in the business” means—

24                   (A) as applied to a manufacturer of to-  
25           bacco products, any person who devotes time,

1 attention, and labor to manufacturing tobacco  
2 products for sale or distribution;

3 (B) as applied to an importer of tobacco  
4 products, any person who devotes time, atten-  
5 tion, and labor to importing tobacco products  
6 into the United States from a place outside of  
7 the United States for sale or distribution;

8 (C) as applied to an exporter of tobacco  
9 products, any person who devotes time, atten-  
10 tion, and labor to exporting tobacco products  
11 for sale or distribution outside of the United  
12 States;

13 (D) as applied to a wholesaler in tobacco  
14 products, any person who devotes time, atten-  
15 tion, and labor to the sale or distribution of to-  
16 bacco products at wholesale; and

17 (E) as applied to a retailer in tobacco  
18 products, any person who devotes time, atten-  
19 tion, and labor to the sale or distribution of to-  
20 bacco products to consumers.

21 (4) EXPORTER.—The term “exporter” means  
22 any person engaged in the business of exporting to-  
23 bacco products from the United States for purposes  
24 of sale or distribution. The term “licensed exporter”

1 means any such person licensed under the provisions  
2 of this subtitle.

3 (5) IMPORTER.—The term “importer” means  
4 any person engaged in the business of importing to-  
5 bacco products into the United States for purposes  
6 of sale or distribution. The term “licensed importer”  
7 means any such person licensed under the provisions  
8 of this subtitle.

9 (6) INTENTIONALLY.—The term “intentionally”  
10 means doing an act, or omitting to do an act, delib-  
11 erately, and not due to accident, inadvertence, or  
12 mistake. An intentional act does not require that a  
13 person knew that such person’s act constituted an  
14 offense.

15 (7) MANUFACTURER.—The term “manufac-  
16 turer” means any person engaged in the business of  
17 manufacturing a tobacco product for purposes of  
18 sale or distribution. The term “licensed manufac-  
19 turer” means any such person licensed under the  
20 provisions of this subtitle, except that such term  
21 shall not include a person who produces cigars, ciga-  
22 rettes, smokeless tobacco, or pipe tobacco solely for  
23 his own personal consumption or use.



1           (8) PERSON.—The term “person” includes any  
2           individual, corporation, company, association, firm,  
3           partnership, society, or joint stock company.

4           (9) SECRETARY.—The term “Secretary” means  
5           the Secretary of the Treasury.

6           (10) UNITED STATES.—The term “United  
7           States” means the several States, the District of Co-  
8           lumbia, the Commonwealth of Puerto Rico, and the  
9           possessions of the United States.

10          (11) WHOLESALER.—The term “wholesaler”  
11          means any person engaged in the business of pur-  
12          chasing tobacco products for resale at wholesale, or  
13          any person acting as an agent or broker for any per-  
14          son engaged in the business of purchasing tobacco  
15          products for resale at wholesale.

16 **SEC. 222. MINIMAL FEDERAL LICENSING AND REGISTRA-**  
17 **TION PROGRAM.**

18          (a) ESTABLISHMENT.—The Secretary shall establish  
19          a minimum Federal licensing and registration program  
20          that provides for a comprehensive system to support State  
21          efforts to collect State tobacco excise taxes and to prevent  
22          tobacco contraband activities.

23          (b) FUNDING.—The Secretary shall use amounts  
24          made available under section 101(d)(2)(D) to carry out  
25          this section.

1 **SEC. 223. LICENSING AND RETAILER REGISTRATION.**

2 (a) LICENSING.—

3 (1) REQUIREMENT.—No person shall engage in  
4 the business as a manufacturer, importer, exporter,  
5 or wholesaler of tobacco products until such person  
6 has been licensed to do so by the Secretary.

7 (2) APPLICATION.—To be licensed under this  
8 section, a manufacturer, importer, exporter or  
9 wholesaler shall prepare and submit to the Secretary  
10 an application at such time, in such manner and  
11 containing such information as the Secretary deter-  
12 mines necessary to determine the eligibility of the  
13 applicant to be licensed under this section. The Sec-  
14 retary may promulgate regulations to prescribe ap-  
15 plication requirements under this paragraph.

16 (3) FEE.—Each applicant under paragraph (2)  
17 shall pay an annual fee to the Secretary for obtain-  
18 ing and maintaining a license under this section. A  
19 separate license and fee shall be required for each  
20 place in which the applicant is to do business. Fail-  
21 ure to pay an annual fee will result in the automatic  
22 termination of the license.

23 (4) ELIGIBILITY.—A person shall be entitled to  
24 a license under this section unless the Secretary  
25 finds—

1 (A) that such person has been previously  
 2 convicted of a Federal crime relating to to-  
 3 bacco, including the taxation thereof;

4 (B) that such person has, during the 5-  
 5 year period prior to the date on which the ap-  
 6 plication is submitted, been convicted of any fel-  
 7 ony under Federal or State law; or

8 (C) that such person is, by virtue of that  
 9 person's business experience, financial standing,  
 10 or trade connections, not likely to maintain  
 11 such operations in conformity with Federal law.

12 (5) ISSUANCE OF LICENSE.—Upon the filing of  
 13 a proper application under paragraph (2), the pay-  
 14 ment of the prescribed annual fee under paragraph  
 15 (3), and a finding by the Secretary that the person  
 16 is entitled to a license under paragraph (4), the Sec-  
 17 retary shall issue to the applicant the appropriate li-  
 18 cense and such license shall entitle the licensee to  
 19 engage in the business of manufacturing, importing,  
 20 exporting, or wholesaling in tobacco products as the  
 21 case may be, subject to the provisions of this subtitle  
 22 and other applicable provisions of law.

23 (6) DURATION.—A license issued under this  
 24 subtitle shall continue in effect until revoked, sus-

1       pended, or annulled as provided for in this subtitle,  
2       or until voluntarily surrendered, except that—

3               (A) if leased, sold, or otherwise trans-  
4               ferred, the license shall be automatically termi-  
5               nated; and

6               (B) if transferred by operation of law or if  
7               actual or legal control of the licensee is ac-  
8               quired, directly or indirectly, whether by stock-  
9               ownership or in any other manner, by any per-  
10              son, then such license shall be terminated after  
11              30 days.

12       If within the 30-day period described in subpara-  
13       graph (B), an application is made for a new license,  
14       the outstanding license to which such subparagraph  
15       applies shall continue in effect until such application  
16       is finally acted upon by the Secretary.

17              (7) CONDITIONS.—All licenses issued under this  
18       subtitle shall be conditioned upon compliance with  
19       the provisions of this subtitle, all Federal laws relat-  
20       ing to the taxation of tobacco products, chapter 114  
21       of title 18, United States Code, the Jenkins Act (15  
22       U.S.C. 375, et seq.) and any regulations issued pur-  
23       suant to such provisions.

24       (b) RETAILER REGISTRATION.—

1           (1) REQUIREMENT.—No person shall engage in  
2           the business as a retailer of tobacco products until  
3           such person has registered with the Secretary and  
4           paid a fee for obtaining such registration. A sepa-  
5           rate registration and fee shall be required for each  
6           place in which the retailer is to do business. Such  
7           fee shall be paid in such form, manner, and at such  
8           time as the Secretary by regulation shall prescribe.  
9           No fee shall be pro-rated if a retailer commences op-  
10          erations any time after the first of the year.

11          (2) FORM AND CONTENT.—A registration under  
12          this subsection shall be in such form and contain  
13          such information as determined to be necessary by  
14          the Secretary. The Secretary may promulgate regu-  
15          lations to prescribe registration requirements under  
16          this paragraph.

17          (3) DURATION.—

18                (A) IN GENERAL.—A registration issued  
19                under this subsection shall continue in effect for  
20                a period of 1 year from the date of issuance.

21                (B) LIMITATION.—A registration issued  
22                under this subsection may not be leased, sold,  
23                or transferred, by operation of law or otherwise.  
24                Any registration issued under this subsection  
25                shall terminate upon the lease, sale, or transfer,

1           by operation of law, or otherwise, of such reg-  
2           istration to another person.

3           (4) ISSUANCE OF REGISTRATION.—Upon the  
4           filing of a proper registration and payment of the  
5           prescribed fee under paragraph (1), the Secretary  
6           shall register a qualified retailer that, subject to the  
7           provisions of this subtitle and other applicable provi-  
8           sions of law, shall entitle the retailer to engage in  
9           the business as a retailer in tobacco products, unless  
10          the Secretary finds that the person submitting a reg-  
11          istration has previously had a registration under this  
12          subtitle revoked.

13          (5) CONDITIONS.—A retailer registration under  
14          this subtitle shall be conditioned upon compliance  
15          with this subtitle, all Federal laws relating to the  
16          taxation of tobacco products, chapter 114 of title 18,  
17          United States Code, and any regulations issued pur-  
18          suant to such provisions.

19          (c) PROCEDURES.—

20          (1) ANNULMENT.—The Secretary may, after  
21          providing notice, annul any license or registration  
22          issued under this subtitle if the Secretary finds that  
23          the license or registration was procured through  
24          fraud, misrepresentation, or concealment of material  
25          fact. If the Secretary annuls a license or registration

1 under this paragraph, the Secretary shall, upon a re-  
2 quest by the aggrieved party, promptly hold a hear-  
3 ing to review the annulment of such license or reg-  
4 istration.

5 (2) DENIAL.—The Secretary may, after provid-  
6 ing notice, deny any application for a license or re-  
7 ject any registration submitted under this subtitle by  
8 a person the Secretary has reason to believe is not  
9 entitled to receive such license or registration. If the  
10 Secretary denies an application for a license or re-  
11 jects a registration, the Secretary shall, upon a re-  
12 quest by the aggrieved party, promptly hold a hear-  
13 ing to review the denial, revocation, or suspension of  
14 such license or registration.

15 (3) REVOCATION OR SUSPENSION.—The Sec-  
16 retary may, after providing notice, revoke, or sus-  
17 pend any license or registration issued under this  
18 subtitle if the Secretary finds the person holding the  
19 license or registration has violated the conditions of  
20 licensing or registration. If the Secretary revokes or  
21 suspends a license or registration, the Secretary  
22 shall, upon request by the aggrieved party, promptly  
23 hold a hearing to review the revocation or suspen-  
24 sion of such license or registration.

1           (4) VIOLATION OF YOUTH ACCESS RESTRIC-  
2       TIONS.—

3           (A) IN GENERAL.—Upon the issuance of a  
4       final order by the Secretary of Health and  
5       Human Services pursuant to the Federal Food,  
6       Drug and Cosmetic Act (21 U.S.C. 321 et seq.)  
7       that a registered retailer has violated section  
8       520(e) of the Federal Food, Drug and Cosmetic  
9       Act (21 U.S.C. 360j(e)), or the regulations  
10      issued thereunder, and upon proper referral of  
11      such final order to the Secretary, a registration  
12      issued under this subtitle shall be automatically  
13      suspended or revoked in accordance with the  
14      final order of the Secretary of Health and  
15      Human Services. Upon receipt of such order,  
16      the Secretary shall, within 30 days, provide no-  
17      tice to the registrant that the registration in-  
18      volved is suspended or revoked.

19          (B) NONAPPLICATION OF CERTAIN PROVI-  
20      SIONS.—The provisions of subsections (d) and  
21      (e) shall not apply with respect to the revoca-  
22      tion or suspension of any registration issued  
23      under this subtitle resulting from a final order  
24      from the Secretary of Health and Human Serv-  
25      ices under subparagraph (A).



1           (5) VIOLATION OF KIDS ACT PROVISIONS.—

2           Upon a certification by the Secretary of Health and  
 3           Human Services that a licensed or registered entity  
 4           under this section has violated a provision of this  
 5           Act (or an amendment made by this Act) the Sec-  
 6           retary of the Treasury may, after providing notice,  
 7           revoke, or suspend any license or registration. If the  
 8           Secretary revokes or suspends a license or registra-  
 9           tion, the Secretary shall, upon a request by the ag-  
 10          grieved party, promptly hold a hearing to review the  
 11          revocation, or suspension of such license or registra-  
 12          tion.

13          (d) PROCESS.—

14           (1) IN GENERAL.—Any person whose applica-  
 15          tion for a license is denied or application for reg-  
 16          istration is rejected, or any holder of a license or  
 17          registration that is revoked, suspended, or annulled  
 18          shall receive a written notice from the Secretary  
 19          stating specifically the grounds upon which the ap-  
 20          plication was denied or upon which the license or  
 21          registration was revoked, suspended, or annulled.  
 22          Notice of a revocation or suspension of a license or  
 23          registration shall be given to the holder of such li-  
 24          cense or registration prior to the effective date of  
 25          the revocation or suspension.

1           (2) NOTICE.—Written notice of any denial of  
2           application, rejection of registration, suspension, rev-  
3           ocation, annulment, or other proceedings, shall be  
4           served—

5                   (A) in person by any officer or employee of  
6           the Secretary authorized for such purpose; or

7                   (B) by mailing the order certified mail, ad-  
8           dressed to the applicant or respondent at the  
9           last known address in the records of the Sec-  
10          retary.

11       (e) APPEAL.—

12           (1) IN GENERAL.—An applicant, registrant, or  
13          licensee may appeal any final order of the Secretary  
14          denying an application for a license, rejecting a reg-  
15          istration, or suspending, revoking, or annulling, a li-  
16          cense or registration.

17           (2) FILING.—An aggrieved party may, at any  
18          time within 60 days after the date on which a notice  
19          of a final order described in paragraph (1) was re-  
20          ceived, file a petition in the circuit court of appeals  
21          of the United States within any circuit in which such  
22          person resides or has as a principal place of busi-  
23          ness, or in the United States Court of Appeals for  
24          the District of Columbia, asking that the order of

1 the Secretary be modified or set aside in whole or  
2 in part.

3 (3) REQUIREMENT.—With respect to a filing  
4 under paragraph (2), a copy of the petition shall be  
5 transmitted by the clerk of the court to the Sec-  
6 retary, or any officer designated by the Secretary for  
7 that purpose, and thereupon the Secretary shall file  
8 in the court the record upon which the order com-  
9 plained of was entered, as provided for in section  
10 2112 of title 28, United States Code.

11 (4) JURISDICTION.—Upon the filing of a peti-  
12 tion with the court under this subsection, the court  
13 shall have exclusive jurisdiction to affirm, modify, or  
14 set aside such order, in whole or in part.

15 (5) PROCEDURE.—

16 (A) OBJECTION.—No objection to the  
17 order of the Secretary shall be considered by  
18 the court under this subsection unless such ob-  
19 jection shall have been urged before the Sec-  
20 retary or unless there were reasonable grounds  
21 for failure to do so.

22 (B) FINDINGS.—The findings of the Sec-  
23 retary as to the facts, if supported by substan-  
24 tial evidence, shall be conclusive in any action  
25 under this subsection.

1 (C) ADDITIONAL EVIDENCE.—If any party  
2 in an action under this subsection applies to the  
3 court for leave to adduce additional evidence,  
4 and demonstrated to the satisfaction of the  
5 court that such additional evidence is material  
6 and there were reasonable grounds for failure  
7 to adduce such evidence on the proceeding be-  
8 fore the Secretary, the court may order such  
9 additional evidence to be taken before the Sec-  
10 retary and to be adduced upon the hearing in  
11 such manner and upon such terms and condi-  
12 tions as the court may deem proper.

13 (D) MODIFICATION OF FINDINGS.—The  
14 Secretary may modify findings to which this  
15 subsection applies as to the facts by reason of  
16 additional evidence taken under subparagraph  
17 (C), and the Secretary shall file with the court  
18 such new or modified findings, which, if sup-  
19 ported by substantial evidence, shall be conclu-  
20 sive. The recommendations of the Secretary, if  
21 any, for the modification or setting aside of the  
22 original order shall be conclusive.

23 (6) ORDER OF COURT.—The judgment or de-  
24 cree of the court affirming, modifying, or setting  
25 aside, in whole or in part, any order of the Secretary

1 under this section shall be final, subject to review by  
2 the Supreme Court of the United States upon certio-  
3 rari or certification as provided for in section 1254  
4 of title 28, United States Code.

5 (7) STAY.—The commencement of proceedings  
6 under this subsection shall, unless specifically or-  
7 dered by the court to the contrary, operate as a stay  
8 of the Secretary's order.

9 **SEC. 224. UNLAWFUL ACTS.**

10 (a) IN GENERAL.—It shall be unlawful for any per-  
11 son—

12 (1) except a licensed manufacturer, licensed ex-  
13 porter, licensed importer, or licensed wholesaler to  
14 engage intentionally in the business of manufactur-  
15 ing, exporting, importing or wholesaling any tobacco  
16 product; or

17 (2) except a registered retailer to engage inten-  
18 tionally in the business of selling or offering for sale  
19 tobacco products at retail.

20 (b) SHIPMENT TO OTHER THAN LICENSED OR REG-  
21 ISTERED ENTITY.—It shall be unlawful for any licensed  
22 importer, licensed manufacturer, licensed wholesaler in-  
23 tentiously to ship, transport, deliver or receive any to-  
24 bacco products from or to any person other than a person  
25 licensed or registered under this subtitle.

1 (c) RETAILERS.—It shall be unlawful for any retailer  
2 registered under this subtitle intentionally—

3 (1) to receive tobacco products from any person  
4 other than a licensed manufacturer, licensed im-  
5 porter, or licensed wholesaler; or

6 (2) to sell or offer for sale to any person in a  
7 single transaction any tobacco products in quantities  
8 of more than 50 packages, other than a direct re-  
9 turn to a licensee for credit.

10 (d) EXPORTERS.—

11 (1) IN GENERAL.—It shall be unlawful for any  
12 licensed exporter intentionally—

13 (A) to ship, transport, sell or deliver for  
14 sale any tobacco products to any person other  
15 than a licensed manufacturer, licensed im-  
16 porter, licensed wholesaler, or foreign pur-  
17 chaser;

18 (B) to receive any tobacco products from  
19 any person other than a licensed manufacturer,  
20 licensed importer, or licensed wholesaler; or

21 (C) to ship, transport, sell, deliver or oth-  
22 erwise transfer any tobacco product intended  
23 for export unless the package containing the to-  
24 bacco product is marked “FOR EXPORT  
25 ONLY FROM THE UNITED STATES”.

1           (2) LIMITATION.—It shall be unlawful for any  
2           person other than a licensed exporter intentionally to  
3           ship, transport, receive or possess, for purposes of  
4           resale, any tobacco product in packages marked  
5           “FOR EXPORT ONLY FROM THE UNITED  
6           STATES,” other than for direct return to the man-  
7           ufacturer or exporter for re-packing or for re-expor-  
8           tation.

9           (e) FALSE RECORDS.—It shall be unlawful for any  
10          licensed manufacturer, licensed exporter, licensed im-  
11          porter, licensed wholesaler, or retailer to make inten-  
12          tionally any false entry in, to fail willfully to make appro-  
13          priate entry in, or to fail willfully to maintain properly  
14          any record or report that such person is required to keep  
15          as required by this subtitle or the regulations promulgated  
16          thereunder.

17          (f) CONTRABAND PRODUCTS.—It shall be unlawful  
18          for any person intentionally to ship, transport, receive,  
19          possess, sell, offer for sale, distribute, or purchase contra-  
20          band tobacco products in or affecting interstate commerce.

21   **SEC. 225. PENALTIES AND COMPROMISE OF LIABILITY.**

22          (a) CRIMINAL PENALTIES.—Any person violating any  
23          of the provisions of section 224 shall upon conviction be  
24          fined as provided for in section 3571 of title 18, United

1 States Code, imprisoned for not more than 5 years, or  
2 both.

3 (b) CIVIL PENALTIES.—The Secretary may, in lieu  
4 of referring violations of this section for criminal prosecu-  
5 tion, impose a civil penalty of not more than \$10,000 for  
6 each offense.

7 (c) COMPROMISE OF LIABILITY.—The Secretary is  
8 authorized, with respect to any violation of this subtitle  
9 or any regulation issued thereunder, to compromise the  
10 liability arising with respect to such violation upon pay-  
11 ment of a sum for each offense prior to referral to the  
12 Department of Justice for prosecution or defense. The At-  
13 torney General may compromise any such case after refer-  
14 ral to the Department of Justice for prosecution or de-  
15 fense.

16 (d) FORFEITURE.—

17 (1) IN GENERAL.—The Secretary shall seize  
18 and forfeit, in accordance with section 9703(o) of  
19 title 31, United States Code, any conveyance, to-  
20 bacco products, or monetary instrument (as defined  
21 in section 5312 of title 31, United States Code) in-  
22 volved in a violation of this subtitle or any property,  
23 real or personal, which constitutes or is derived from  
24 proceeds traceable to a violation of this subtitle.



1           (2) SENTENCING.—The court, in imposing sen-  
2       tence on a person convicted of violating this subtitle,  
3       shall order that person to forfeit to the United  
4       States any property described in paragraph (1) in-  
5       volved in such violation. The seizure and forfeiture  
6       of such property shall be governed by subsections  
7       (b), (c) and (e) through (p) of section 853 of title  
8       21, United States Code.

9   **SEC. 226. GENERAL ADMINISTRATIVE PROVISIONS.**

10       (a) RECORDS.—

11           (1) IN GENERAL.—Every manufacturer, im-  
12       porter, wholesaler, or exporter shall maintain records  
13       in such manner as the Secretary shall by regulation  
14       prescribe.

15           (2) RETAILER.—Every retailer of tobacco prod-  
16       ucts shall maintain records in a manner as the Sec-  
17       retary shall by regulation prescribe, including  
18       records of tobacco products received, and the person  
19       from whom such tobacco products were received.

20           (3) REQUIREMENT.—The records required by  
21       this subsection shall be maintained for a period of  
22       not less than 5 years and the Secretary may, by giv-  
23       ing written notice to the manufacturer, importer,  
24       wholesaler, exporter, or retailer require the retention  
25       for an additional period of not more than 2 years.

1 (b) PRESERVATION AND INSPECTION OF RECORDS.—

2 Any records or documents required to be maintained  
3 under subsection (a) or any regulations issued pursuant  
4 thereto shall be preserved by the person required to keep  
5 such records or documents available for inspection by the  
6 Secretary during business hours.

7 (c) ENTRY OF PREMISES FOR INSPECTION.—The

8 Secretary may enter, during business hours, the premises  
9 (including places of storage) of any manufacturer, im-  
10 porter, wholesaler, exporter, or retailer for the purposes  
11 of inspecting such premises and for the examination of  
12 any required record or inventory of tobacco products kept  
13 or stored by such person on the business premises.

14 (d) EXAMINATION AND SUMMONS.—

15 (1) IN GENERAL.—For the purpose of deter-  
16 mining whether any manufacturer, importer, whole-  
17 saler, exporter, retailer, or any other person is in  
18 compliance with the provisions of this subtitle, the  
19 Secretary is authorized, at all reasonable times, to  
20 examine and copy any books, paper, records, or  
21 other data that may be relevant or material to such  
22 inquiry.

23 (2) SUMMONS.—In order to conduct an inspec-  
24 tion, investigation, or maintain an enforcement ac-  
25 tion under this section, the Secretary may summon

1 any person having information on the compliance of  
2 the provisions of this subtitle by any manufacturer,  
3 importer, wholesaler, exporter, retailer, or any other  
4 person to appear before the Secretary at a time and  
5 place named in the summons and to give testimony  
6 under oath or produce such books, papers, records,  
7 or other data as may be relevant or material to such  
8 inquiry.

9 (3) SERVICE.—A summons shall be served by  
10 the Secretary, by an attested copy delivered in hand  
11 to the person to whom it is directed, or left at such  
12 person's last place of business or abode. The certifi-  
13 cate of service signed by the person serving the sum-  
14 mons shall be evidence of the facts it states on the  
15 hearing of an application for the enforcement of the  
16 summons. When the summons requires the produc-  
17 tion of books, papers, records, or other data, it shall  
18 be sufficient if such books, papers, records, or other  
19 data are described with reasonable certainty.

20 (4) JURISDICTION.—Any of the district courts  
21 of the United States within the jurisdiction of which  
22 such inquiry is carried on may, in case of contumacy  
23 or refusal to obey a summons, issue to a person an  
24 order requiring such person to appear before the  
25 Secretary and give such testimony or produce such

1 books, papers, records, or other data relating to the  
2 inquiry. Any failure to obey such order of the court  
3 may be punished by such court as a contempt there-  
4 of.

5 (e) INDUSTRY COMPLIANCE PROGRAM.—The Sec-  
6 retary shall prescribe regulations necessary to ensure each  
7 licensee establishes and maintains a compliance program.  
8 Such program shall be designed to ensure that retailers  
9 comply with Federal laws and regulations relating to the  
10 distribution of tobacco products to consumers.

11 (f) REPORTS TO THE SECRETARY.—

12 (1) IN GENERAL.—The Secretary is authorized  
13 to require, in such manner and form as shall be pre-  
14 scribed in regulations, such reports as are necessary  
15 to carry out the powers and duties under this sub-  
16 title including any reports deemed necessary to en-  
17 sure the proper accounting of materials necessary to  
18 manufacture tobacco products. Such reports will in-  
19 clude detailed descriptions of licensee compliance  
20 programs that have been developed by the licensees  
21 to ensure that retailers comply with the Federal laws  
22 and regulations relating to the distribution of to-  
23 bacco products to consumers.

24 (2) REPORTS TO CONGRESS.—The Secretary  
25 shall biennially prepare and submit to the appro-

1        priate committees of Congress a report concerning  
2        the activities of the Secretary under this subtitle.

3        (g) UTILIZATION OF OTHER GOVERNMENT AGEN-  
4        CIES.—The Secretary may, with the consent of the depart-  
5        ment or agency affected, utilize the services of any depart-  
6        ment or other agency of the Federal Government to the  
7        extent necessary to carry out the powers and duties under  
8        this subtitle and authorize officers and employees thereof  
9        to act as agents of the Secretary. The Secretary may pro-  
10       vide funds to State and local enforcement entities to be  
11       used to support training and technical assistance. Such  
12       activities shall be coordinated with the Secretary of Health  
13       and Human Services in the conduct of State-based en-  
14       forcement of requirements relating to restriction on mi-  
15       nors' access to tobacco products.

16       (h) MARKINGS, BRANDING, IDENTIFICATION.—To-  
17       bacco products shall be marked, branded, packaged, or  
18       identified in such a manner as the Secretary shall by regu-  
19       lation prescribe.

20       (i) PROCEEDS OF INVESTIGATIVE OPERATIONS.—  
21       With respect to any undercover investigative operation of  
22       the Bureau of Alcohol, Tobacco and Firearms (referred  
23       to in this subtitle as “ATF”) that is necessary for the  
24       detection and prosecution of offenses against the United

1 States under this subtitle, and notwithstanding any other  
2 provision of law—

3 (1) amounts collected under section 227 and  
4 the proceeds from such operation may be deposited  
5 in banks or other financial institutions;

6 (2) the proceeds from such operation may be  
7 used to offset necessary and reasonable expenses in-  
8 curred in such operation;

9 (3) amounts collected under section 227 may be  
10 used to purchase property, building, and other facili-  
11 ties, and to lease space within the United States, the  
12 District of Columbia, and the territories and posses-  
13 sions of the United States, and to establish or ac-  
14 quire proprietary corporations or business entities on  
15 a commercial basis; and

16 (4) ATF shall comply with liquidation, deposit,  
17 audit, and reporting provisions in sections 2081(b)  
18 through (d) of title 19, United States Code, to the  
19 extent applicable and not inconsistent with this sub-  
20 section;

21 if, with respect to paragraphs (1), (2) and (3), the Direc-  
22 tor has certified in writing that the actions authorized by  
23 paragraphs (1), (2), and (3) are necessary for the conduct  
24 of such operation.

1       (j) AUTHORIZATION OF APPROPRIATIONS AND  
2 TRACKING SYSTEM.—

3           (1) AUTHORIZATION OF APPROPRIATIONS.—

4       There are authorized to be appropriated amounts  
5       provided under section 101(d)(2)(D) to enable the  
6       Department of the Treasury to carry out activities  
7       under this subtitle relating to—

8           (A) training of Federal, State, and foreign  
9       tobacco administrators and enforcement offi-  
10      cials;

11          (B) training for smuggling and diversion  
12      interdiction;

13          (C) educational outreach for tobacco indus-  
14      try members on the objectives of this Act and  
15      the responsibilities of such individuals under  
16      this Act;

17          (D) research by the Customs Services and  
18      the Bureau relating to tracking technologies;  
19      and

20          (E) other activities relating to the purposes  
21      of this subtitle.

22          (2) TRACKING SYSTEM.—In establishing a con-  
23      trolled commodity tracking system for tobacco prod-  
24      ucts, the Secretary shall evaluate the deployment of  
25      an innovative anti-diversion system that can be im-

1       plemented at the manufacturing level to track prod-  
2       ucts through the stream of commerce to the point of  
3       retail sale.

4   **SEC. 227. FUNDING.**

5       (a) **LICENSING AND REGISTRATION FEES.**—The Sec-  
6       retary may, in the Secretary's sole discretion, set the li-  
7       censing and registration fees required by this subtitle, in  
8       such amounts as are necessary to recover the costs of ad-  
9       ministering the provisions of this subtitle, including pre-  
10      venting trafficking in contraband tobacco products.

11      (b) **DISPOSITION OF FEES.**—

12           (1) **ACCOUNT.**—Fees collected by the Secretary  
13      under this subtitle shall be deposited in an account  
14      within the Treasury of the United States that is spe-  
15      cially designated for paying the costs associated with  
16      the administration or enforcement of this subtitle or  
17      any other Federal law relating to the unlawful traf-  
18      ficking of tobacco products.

19           (2) **PAYMENTS.**—The Secretary is authorized  
20      and directed to pay out of any funds in the account  
21      referred to in paragraph (1) any expenses incurred  
22      by the Federal Government in administering and en-  
23      forcing this subtitle or any other Federal law relat-  
24      ing to the unlawful trafficking in tobacco products  
25      (including expenses incurred for the salaries and ex-



1       penses of individuals employed to provide such serv-  
2       ices).

3           (3) LIMITATION.—None of the funds deposited  
4       into the account referred to in paragraph (1) shall  
5       be made available for any purpose other than mak-  
6       ing payments authorized under the preceding sen-  
7       tence.

8       (c) SUPPLEMENT NOT SUPPLANT.—Amounts pro-  
9       vided under this subtitle for the Department of the Treas-  
10      ury shall be in addition to any other amounts appropriated  
11      for such Department. Amounts otherwise appropriated for  
12      such Department shall not be reduced below the amounts  
13      so appropriated for fiscal year 1998, as a result of the  
14      amounts made available under this subtitle.

15   **SEC. 228. TRANSITIONAL RULES.**

16       (a) MANUFACTURERS OR EXPORTERS.—Any manu-  
17      facturer or export warehouse proprietor, who, on the date  
18      of enactment of this Act, is a permittee under chapter 52  
19      of the Internal Revenue Code of 1986, and who submits  
20      an application pursuant to the provisions of this subtitle  
21      not later than 90 days after the date of enactment of this  
22      Act, may continue to engage in such business pending  
23      final action on such application.

24       (b) IMPORTERS, EXPORTERS, WHOLESALERS AND  
25      RETAILERS.—Any person engaged in the business of im-

1 porting, exporting, wholesaling, or retailing tobacco prod-  
2 ucts on the date of enactment of this Act, who submits  
3 an application pursuant to the provisions of this subtitle  
4 not later than 90 days after the date of enactment of this  
5 Act, may continue to engage in such business pending  
6 final action on such application.

7 **SEC. 229. RULES AND REGULATIONS.**

8       The Secretary shall prescribe rules and regulations  
9 for the enforcement of this subtitle, including all rules and  
10 regulations that are necessary to ensure the lawful dis-  
11 tribution of tobacco products in interstate or foreign com-  
12 merce.

13 **SEC. 230. SEVERABILITY.**

14       If any provision of this subtitle or the application  
15 thereof to any person or circumstance is held invalid, the  
16 validity of the remainder of this subtitle and of the appli-  
17 cation of such provision to other persons and cir-  
18 cumstances shall not be affected thereby.

19 **SEC. 231. EFFECT ON STATE OR LOCAL LAW.**

20       No provision of this subtitle shall be construed to oc-  
21 cupy the field in which such provision operates to the ex-  
22 clusion of the law of any State or political subdivision  
23 thereof on the same subject matter, unless there is a direct  
24 and positive conflict between such provision and the law

1 of the State or political subdivision thereof so that the two  
 2 cannot be reconciled or consistently stand together.

3 **SEC. 232. AMENDMENT TO CONTRABAND CIGARETTE TRAF-**  
 4 **FICKING ACT.**

5 Chapter 114 of title 18, United States Code, is  
 6 amended—

7 (1) in section 2341—

8 (A) in paragraph (2)—

9 (i) by striking “60,000” and inserting  
 10 “30,000”; and

11 (ii) by striking “if such State” and all  
 12 that follows through “payment of cigarette  
 13 taxes”;

14 (B) in paragraph (4), by striking “and” at  
 15 the end;

16 (C) in paragraph (5), by striking the pe-  
 17 riod and inserting “; and”; and

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

19 “(6) the term ‘tobacco product’ means ciga-  
 20 rettes, cigarette tobacco, smokeless tobacco, little ci-  
 21 gars, roll-your-own products, cigars, cigarillos, pipe  
 22 tobacco, roll-your-own products, (as such terms are  
 23 defined in section 5 of the KIDS Act) and any other  
 24 product made or derived from tobacco intended for  
 25 human consumption.”;

1           (2) in section 2342(b), by striking “60,000”  
2           and inserting “30,000”;

3           (3) in sections 2343, by striking “60,000” each  
4           place that such term appears and inserting  
5           “30,000”.

6           (4) by striking “cigarette” each place that such  
7           term appears, other than in paragraphs (1) and (6)  
8           of section 2341, and inserting “tobacco product”;  
9           and

10          (5) by striking “cigarettes” each place that  
11          such term appears and inserting “tobacco products”.

## 12                           **Subtitle D—Penalties**

### 13   **SEC. 241. PENALTIES.**

14          Section 307 of the Federal Food, Drug, and Cosmetic  
15   Act (21 U.S.C. 335b) is amended by adding at the end  
16   the following:

17          “(f) PENALTIES RELATING TO TOBACCO PROD-  
18   UCTS.—

19               “(1) COMPLIANCE AND DISCLOSURE.—

20                       “(A) IN GENERAL.—Any tobacco manufac-  
21                   turer, or employee or agent of any tobacco man-  
22                   ufacturer which violates this Act or the KIDS  
23                   Act shall be subject to a civil penalty of  
24                   \$25,000 per day of violation. In addition, the  
25                   Secretary may require any such manufacturer

1 to include in its advertising for the relevant to-  
2 bacco product a statement of such violation.

3 “(B) DISCLOSURE.—Any tobacco product  
4 manufacturer or employee or agent of any to-  
5 bacco product manufacturer who fails to dis-  
6 close to the Secretary research documents or in-  
7 formation required to be disclosed by this Act  
8 or the KIDS Act or any other provision of law  
9 relating to the health effects or toxicity of to-  
10 bacco products, nontobacco ingredients and to-  
11 bacco product constituents shall be subject to a  
12 civil penalty of not more than \$10,000,000 for  
13 each such violation. Such civil penalty shall be  
14 in addition to any other criminal, civil or ad-  
15 ministrative penalty prescribed by law.

16 “(2) CIVIL ACTIONS TO RECOVER PENALTIES.—  
17 The Secretary may commence a civil action to assess  
18 and recover any civil penalty under paragraph (1) in  
19 the district court of the United States for the dis-  
20 trict in which the violation is alleged to have oc-  
21 curred or in which the defendant resides or has its  
22 principal place of business. The court shall have ju-  
23 risdiction to assess a civil penalty in such an action.  
24 In determining the amount of any civil penalty to be

1       assessed under this subsection, the court shall take  
2       into account—

3               “(A) the gravity of the violation;

4               “(B) the economic benefit or savings (if  
5       any) resulting from the violation;

6               “(C) the size of the violator’s business;

7               “(D) the violator’s history of compliance  
8       with this Act;

9               “(E) action taken to remedy the violation;

10              “(F) the effect of the penalty on the viola-  
11       tor’s ability to continue business operations;  
12       and

13              “(G) such other matters as justice may re-  
14       quire.

15       In any such action, subpoenas for witnesses who are  
16       required to attend a district court in any district  
17       may run into any other district.”.

18   **SEC. 242. APPLICATION OF PENALTIES WITH RESPECT TO**  
19                           **VIOLATIONS OF CERTAIN LICENSING PROVI-**  
20                           **SIONS.**

21       (a) IN GENERAL.—A manufacturer, exporter, im-  
22       porter, wholesaler or retailer who violates any provision  
23       of this Act (or an amendment made by this Act) or regula-  
24       tions issued thereunder with respect to tobacco products  
25       shall, in addition to any applicable penalties otherwise pro-

1 vided for in this Act (or amendments), be liable to an  
2 order of the Secretary suspending or revoking a license  
3 or registration issued pursuant to section 223(b). Such  
4 revocation or suspension shall be adjudicated in accord-  
5 ance with the procedures provided for in subsection 303(f)  
6 (3)(A) and (4) of the Federal Food, Drug and Cosmetic  
7 Act (21 U.S.C. 333(f)(3)(A) and (4)). If civil penalties  
8 pursuant to such section 303(f)(1)(A) are being sought  
9 for the same violation or violations, such violation will be  
10 adjudicated in a single proceeding for purposes of such  
11 subsection.

12 (b) NOTIFICATION.—Upon receiving a final order  
13 issued by the Secretary suspending or revoking a license  
14 or registration issued under section 223(c), the Secretary  
15 of the Treasury shall notify the licensee or registrant that  
16 such license or registration has been suspended or revoked  
17 in accordance with this section.

1       **TITLE III—PUBLIC HEALTH**  
2               **INITIATIVES**  
3       **Subtitle A—State-Federal Anti-**  
4               **Tobacco Partnership**  
5       **CHAPTER 1—SCHOOL- AND COMMUNITY-**  
6               **BASED PROGRAMS**

7       **SEC. 301. SCHOOL- AND COMMUNITY-BASED PROGRAMS.**

8           (a) IN GENERAL.—The Secretary, acting through the  
9       Centers for Disease Control and Prevention, shall estab-  
10      lish a program to award cooperative agreements to States  
11      to enable such States—

12           (1) to carry out school-based programs concern-  
13      ing the dangers of using tobacco products using  
14      methods that are effective and evidence-based; and

15           (2) to carry out community-based prevention  
16      programs, including in predominantly minority com-  
17      munities, using methods that are effective and evi-  
18      dence-based.

19           (b) ELIGIBILITY.—To be eligible to receive funds  
20      under this section a State shall prepare and submit to the  
21      Secretary an application at such time, in such manner,  
22      and containing such information as the Secretary may re-  
23      quire, including a State plan (that is subject to approval  
24      by the Secretary) that describes—



1           (1) the types of programs that the State will  
2 fund under the cooperative agreement; and

3           (2) the manner in which the State will monitor  
4 the effectiveness of such programs.

5       (c) ALLOCATION OF FUNDS.—

6           (1) POPULATION-BASED DETERMINATION.—

7 From amounts made available under subsection (f)  
8 for each fiscal year, the Secretary shall provide to a  
9 State an amount that bears the same ratio to 60  
10 percent of such available amounts as the population  
11 of the State bears to the total population of all  
12 States.

13          (2) ALLOCATION BASED ON NEEDS.—The Sec-  
14 retary shall allocate 40 percent of the amount made  
15 available under subsection (f) for a fiscal year to  
16 States based on a formula to be determined by the  
17 Secretary that takes into consideration the anti-to-  
18 bacco needs of the State.

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

21           (1) carry out school-based programs that are  
22 focused on those regions of the State with high  
23 smoking rates and targeted at populations which are  
24 most at risk to start smoking;

1           (2) carry out community-based prevention pro-  
2           grams that are focused on those populations within  
3           the community that are most at-risk to use tobacco  
4           products or that have been targeted by tobacco ad-  
5           vertising or marketing;

6           (3) carry out other activities determined appro-  
7           priate by the Secretary; and

8           (4) assist local governmental entities within the  
9           State to conduct appropriate anti-tobacco activities.

10          (e) ADDITIONAL REQUIREMENTS.—To be eligible to  
11       receive funds under this section a State shall provide as-  
12       surances to the Secretary that—

13           (1) the State will annually report to the Sec-  
14           retary on the effectiveness of the educational ap-  
15           proaches implemented by the State;

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

18           (3) amounts provided to individuals or entities  
19           will be subject to independent audit;

20           (4) the State will fully involve local public  
21           health officials in the planning and implementation  
22           of the program; and

23           (5) the State will coordinate activities under  
24           this section with other Federal anti-tobacco pro-  
25           grams.

1 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated amounts provided under  
3 section 101(d)(2)(B) for a fiscal year to carry out this  
4 section.

5 (g) TRIGGER.—No expenditures shall be made under  
6 this section during any fiscal year in which the annual  
7 amount appropriated for the Centers for Disease Control  
8 and Prevention is less than the amount so appropriated  
9 for the prior fiscal year.

10 **SEC. 302. NATIONAL EVENT SPONSORSHIP PROGRAM.**

11 (a) ESTABLISHMENT.—The Secretary, acting  
12 through the Centers for Disease Control and Prevention,  
13 shall establish a program to be known as the “National  
14 Event Sponsorship Program” under which the Secretary  
15 may award grants to eligible entities or individuals for the  
16 sponsorship of activities described in subsection (c).

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

19 (1) prepare and submit to the Secretary an ap-  
20 plication at such time, in such manner, and contain-  
21 ing such information as the Secretary may require,  
22 including—

23 (A) a description of the event, activity,  
24 team, or entry for which the grant is to be pro-  
25 vided;

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

5 (C) a certification that the applicant is un-  
 6 able to secure funding for the event, activity,  
 7 team, or entry involved from sources other than  
 8 those described in paragraph (2);

9 (2) provide assurances that amounts received  
 10 under the grant will be used in accordance with sub-  
 11 section (d); and

12 (3) meet any other requirements determined ap-  
 13 propriate by the Secretary.

14 (c) PERMISSIBLE SPONSORSHIP ACTIVITIES.—  
 15 Events, activities, teams, or entries for which a grant may  
 16 be provided under this section include—

17 (1) an athletic, musical, artistic, or other social  
 18 or cultural event or activity that was sponsored in  
 19 whole or in part by a tobacco manufacturer or dis-  
 20 tributor prior to the date of enactment of this Act;

21 (2) the participation of a team that was spon-  
 22 sored in whole or in part by a tobacco manufacturer  
 23 or distributor prior to the date of enactment of this  
 24 Act, in an athletic event or activity; and

1           (3) the payment of a portion or all of the entry  
2       fees of, or other financial or technical support pro-  
3       vided to, an individual or team by a tobacco manu-  
4       facturer or distributor prior to the date of enactment  
5       of this Act, for participation of the individual in an  
6       athletic, musical, artistic, or other social or cultural  
7       event.

8       (d) USE OF FUNDS.—Amounts received under a  
9       grant under this section shall be used to—

10           (1)(A) pay the costs associated with the spon-  
11       sorship of an event or activity described in sub-  
12       section (c)(1);

13           (B) provide for the sponsorship of an individual  
14       or team;

15           (C) pay the required entry fees associated with  
16       the participation of an individual or team in an  
17       event or activity described in subsection (c)(3);

18           (D) provide financial or technical support to an  
19       individual or team in connection with the participa-  
20       tion of that individual or team in an activity de-  
21       scribed in subsection (c)(3); or

22           (E) for any other purposes determined appro-  
23       priate by the Secretary; and

1           (2) promote images or activities to discourage  
2           individuals from using tobacco products or encour-  
3           age individuals who use such products to quit.

4           (e) ALLOCATION OF UNEXPENDED FUNDS.—  
5           Amounts available for purposes of carrying out this sec-  
6           tion and remaining available at the end of the 10-year pe-  
7           riod following the date of the establishment of the program  
8           under this section, shall be used as follows:

9           (1) 50 percent of such amounts shall be used  
10          to supplement amounts available for multi-media  
11          campaigns under section 311;

12          (2) 25 percent of such amounts shall be used  
13          to supplement amounts available for Federal or  
14          State tobacco product enforcement purposes; and

15          (3) 25 percent of such amounts shall be used  
16          to supplement amounts available for other commu-  
17          nity-based programs under this subtitle.

18          (f) AUTHORIZATION OF APPROPRIATIONS.—There  
19          are authorized to be appropriated amounts provided under  
20          section 101(d)(2)(B) to carry out this section.

21          (g) SUNSET.—The program established under this  
22          section shall terminate on the date that is 10-years after  
23          the date of enactment of this Act.

1       **CHAPTER 2—COUNTER-ADVERTISING**  
2                               **PROGRAMS**

3   **SEC. 311. FEDERAL-STATE COUNTER-ADVERTISING PRO-**  
4                               **GRAMS.**

5       (a) IN GENERAL.—The Secretary, acting through the  
6 Centers for Disease Control and Prevention, shall carry  
7 out programs to reduce tobacco usage through media-  
8 based (such as counter-advertising campaigns) and  
9 nonmedia-based education, prevention and cessation cam-  
10 paigns designed to discourage the use of tobacco products  
11 by individuals, to encourage those who use such products  
12 to quit, and to educate the public about the hazards of  
13 exposure to environmental tobacco smoke. Such programs  
14 shall include national and local campaigns and shall target  
15 those populations that have been targeted by tobacco in-  
16 dustry advertising.

17       (b) ESTABLISHMENT OF BOARD.—

18               (1) IN GENERAL.—The Secretary shall establish  
19 within the executive branch a board to be known as  
20 the “Anti-Tobacco Public Education Board” (re-  
21 ferred to in this section as the “Board”) to enter  
22 into contracts with or award grants to eligible enti-  
23 ties for the development and dissemination of public  
24 informational and educational campaigns and mes-  
25 sages to reduce the use of tobacco products.

1           (2) COMPOSITION.—The Board shall be com-  
2 posed of—

3           (A) 7 non-Federal members to be ap-  
4 pointed by the Secretary, of which—

5           (i) at least 3 such members shall be  
6 individuals who are widely recognized by  
7 the general public for cultural, educational,  
8 behavioral science or medical achievement;

9           (ii) at least 2 of whom shall be indi-  
10 viduals who hold positions of leadership in  
11 major public health organizations; and

12           (iii) at least 2 of whom shall be indi-  
13 viduals recognized as experts in the field of  
14 advertising and marketing; and

15           (B) the Director of the Office on Smoking  
16 and Health of the Centers for Disease Control  
17 and Prevention who shall serve as an ex officio  
18 member of the Board.

19           (3) TERMS AND VACANCIES.—The members of  
20 the Board shall serve staggered terms as determined  
21 appropriate at the time of appointment by the Sec-  
22 retary. Any vacancy in the Board shall not affect its  
23 powers, but shall be filled in the same manner as the  
24 original appointment.



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

8           (5) REMOVAL.—Members of the Board may  
 9       only be removed by a majority vote of the members  
 10      of the Board for neglect of duty or malfeasance in  
 11      office.

12          (6) DUTIES.—The Board may—

13               (A) enter into contracts with or award  
 14               grants to eligible entities to develop messages  
 15               and campaigns designed to reduce the use of to-  
 16               bacco products that are based on effective strat-  
 17               egies to affect behavioral changes in children  
 18               and other targeted populations; and

19               (B) enter into contracts with or award  
 20               grants to eligible entities to carry out public in-  
 21               formational and educational activities designed  
 22               to reduce the use of tobacco products.

23          (c) ELIGIBILITY.—To be eligible to receive funding  
 24      under this section an entity shall—

25               (1) be a—

1 (A) public entity or a State health depart-  
2 ment; or

3 (B) private or nonprofit private entity  
4 that—

5 (i)(I) is not affiliated with a tobacco  
6 product manufacturer or importer;

7 (II) has a demonstrated record of  
8 working effectively to reduce tobacco prod-  
9 uct use; or

10 (III) has expertise in conducting a  
11 multi-media communications campaign;  
12 and

13 (ii) has expertise in developing strate-  
14 gies that affect behavioral changes in chil-  
15 dren and other targeted populations;

16 (2) prepare and submit to the Board an appli-  
17 cation at such time, in such manner, and containing  
18 such information as the Board may require, includ-  
19 ing a description of the activities to be conducted  
20 using amounts received under the grant or contract;

21 (3) provide assurances that amounts received  
22 under this section will be used in accordance with  
23 subsection (c); and

24 (4) meet any other requirements determined ap-  
25 propriate by the Board.

1       (d) USE OF FUNDS.—An entity that receives funds  
2 under this section shall use amounts provided under the  
3 grant or contract to conduct multi-media public edu-  
4 cational and social marketing campaigns that are designed  
5 to discourage and de-glamorize the use of tobacco prod-  
6 ucts, encourage those using such products to quit, and  
7 educate the public about the hazards of exposure to envi-  
8 ronmental tobacco smoke. Such amounts may be used to  
9 design and implement such activities and to conduct re-  
10 search concerning the effectiveness of such programs.

11       (e) NEEDS OF CERTAIN POPULATIONS.—In awarding  
12 grants and contracts under this section, the Board shall  
13 take into consideration the needs of particular popu-  
14 lations.

15       (f) COORDINATION.—

16           (1) IN GENERAL.—The Secretary shall ensure  
17 that programs and activities under this section are  
18 coordinated with programs and activities carried out  
19 under this title.

20           (2) OTHER FEDERAL ENTITIES.—The Board  
21 may secure directly from any Federal department or  
22 agency such information as the Board considers nec-  
23 essary to carry out the provision of this section.

24       (g) ALLOCATION OF FUNDS.—Not to exceed—

1           (1) 25 percent of the amount made available  
2       under subsection (h) for each fiscal year shall be  
3       provided to States for State and local media-based  
4       and nonmedia-based education, prevention and ces-  
5       sation campaigns;

6           (2) 20 percent of the amount made available  
7       under subsection (h) for each fiscal year shall be  
8       used specifically for the development of new mes-  
9       sages and campaigns; and

10          (3) not less than 50 percent of the amount  
11       made available under subsection (h) for each fiscal  
12       year shall be used specifically to place media mes-  
13       sages and carry out other dissemination activities  
14       described in subsection (d).

15       (h) AUTHORIZATION OF APPROPRIATIONS.—There  
16   are authorized to be appropriated amounts provided under  
17   section 101(d)(2)(B) to carry out this section.

18       (i) TRIGGER.—No expenditures shall be made under  
19   this section during any fiscal year in which the annual  
20   amount appropriated for the Centers for Disease Control  
21   and Prevention is less than the amount so appropriated  
22   for the prior fiscal year.

**CHAPTER 3—NATIONAL CESSATION  
PROGRAM**

**SEC. 321. NATIONAL TOBACCO CESSATION PROGRAM.**

(a) ESTABLISHMENT.—There is established a program to be known as the “National Tobacco Cessation Program”. The Secretary may award grants to, and enter into contracts and cooperative agreements with, public and private entities for the purpose of expanding the availability and utilization of tobacco use cessation products and services.

(b) USE OF FUNDS.—Amounts made available under a grant, contract or cooperative agreement under subsection (a) shall be used for the planning, establishment, or administration of tobacco use cessation programs approved in accordance with subsection (d).

(c) CESSATION PROGRAMS AND ACTIVITIES.—

(1) IN GENERAL.—

(A) REQUIREMENTS.—Programs receiving assistance under this section shall provide a range of cost-effective and evidence-based products and services that are—

(i) consistent with the most recent tobacco cessation guidelines issued by the Agency for Health Care Policy and Research; or

1 (ii) approved as safe and effective for  
2 cessation by the Food and Drug Adminis-  
3 tration.

4 (B) ADDITIONAL GUIDELINES.—Using the  
5 best available scientific information, the Sec-  
6 retary shall promulgate such additional guide-  
7 lines as are necessary to assure the quality, ac-  
8 cessibility and cost effectiveness of products and  
9 services receiving funds under this section.

10 (2) ACTIVITIES.—Except as provided in sub-  
11 sections (d) and (e), amounts provided under this  
12 section may be used for the following:

13 (A) Evidence-based cessation products and  
14 activities described in the application for assist-  
15 ance under this section, including—

16 (i) science-based programs designed to  
17 assist individuals to quit their use of to-  
18 bacco products;

19 (ii) training in cessation intervention  
20 methods for health plans and health pro-  
21 fessionals, including physicians, nurses,  
22 dentists, health educators, public health  
23 professionals, and other health care provid-  
24 ers;

1 (iii) programs to encourage health in-  
2 surers and health plans to provide coverage  
3 for evidence-based tobacco use cessation  
4 interventions and therapies, except that the  
5 use of any funds under this clause to offset  
6 the cost of providing a smoking cessation  
7 benefit may only be used on a temporary  
8 demonstration basis;

9 (iv) programs to encourage employer-  
10 based wellness programs to provide evi-  
11 dence-based tobacco use cessation interven-  
12 tions and therapies; and

13 (v) programs targeted toward minor-  
14 ity and low-income individuals, individuals  
15 residing in medically underserved areas,  
16 and uninsured individuals.

17 (B) Planning, administration, and edu-  
18 cational activities related to the activities de-  
19 scribed in subparagraph (A).

20 (C) The monitoring and evaluation of ac-  
21 tivities carried out under subparagraphs (A)  
22 and (B), and reporting and disseminating re-  
23 sulting information to health professionals and  
24 the public.

1 (D) Targeted pilot programs with evalua-  
2 tion components to encourage innovation and  
3 experimentation with new methodologies.

4 (3) ANALYSES AND EVALUATION.—

5 (A) IN GENERAL.—Not less than  
6 \$30,000,000 of the amount available in each  
7 fiscal year to carry out this section shall be  
8 made available to the Agency for Health Care  
9 Policy and Research, acting in consultation with  
10 the Centers for Disease Control and Prevention,  
11 to support and conduct periodic analyses and  
12 evaluations of effective interventions for smok-  
13 ing cessation and appropriate strategies for dis-  
14 seminating and implementing these services, in-  
15 cluding—

16 (i) the regular updating of tobacco use  
17 cessation guidelines;

18 (ii) the development and dissemina-  
19 tion of special programs in tobacco ces-  
20 sation intervention for national physician  
21 and other health care provider speciality  
22 societies as well as for national and re-  
23 gional health plans;



1 (iii) outcomes, effectiveness, cost-ef-  
2 fectiveness and other health services re-  
3 search on tobacco product cessation; and

4 (iv) the evaluation of the effectiveness  
5 of such activities.

6 (B) RESEARCH.—In carrying subpara-  
7 graph (A), the Centers for Disease Control and  
8 Prevention, in coordination with the Agency for  
9 Health Care Policy and Research, the Food and  
10 Drug Administration and the National Insti-  
11 tutes of Health, shall conduct research on—

12 (i) cultural, social, behavioral, neuro-  
13 logical and psychological factors affecting  
14 how individuals, including youth, success-  
15 fully quit using tobacco products;

16 (ii) the effectiveness of drugs and de-  
17 vices in assisting individuals to stop using  
18 tobacco products, including differences  
19 among populations based on race, gender  
20 or age;

21 (iii) the effects of cessation meth-  
22 odologies, including pharmacological prod-  
23 ucts, on pregnant women; and

24 (iv) other research activities relating  
25 to the cessation of tobacco products.

1           (4) COORDINATION.—Tobacco use cessation ac-  
2           tivities permitted under this subsection may be con-  
3           ducted in coordination with other federally funded  
4           programs, including—

5                   (A) the special supplemental food program  
6                   under section 17 of the Child Nutrition Act of  
7                   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 Insurance  
12                  Program of the State under title XXI of the  
13                  Social Security Act (42 U.S.C. 13397aa et  
14                  seq.);

15                  (D) the school lunch program under the  
16                  National School Lunch Act (42 U.S.C. 1751 et  
17                  seq.);

18                  (E) an Indian Health Service Program;

19                  (F) the community health center program  
20                  under section 330 of the Public Health Service  
21                  Act (42 U.S.C. 254b);

22                  (G) State-initiated smoking cessation pro-  
23                  grams that include provisions for reimbursing  
24                  individuals for medications or therapeutic tech-  
25                  niques;

1 (H) the substance abuse and mental health  
 2 services block grant program, and the preven-  
 3 tive health services block grant program, under  
 4 title XIX of the Public Health Service Act (42  
 5 U.S.C. 300w et seq.);

6 (I) the medicaid program under title XIX  
 7 of the Social Security Act (42 U.S.C. 1396 et  
 8 seq.); and

9 (J) programs administered by the Depart-  
 10 ment of Defense and the Department of Veter-  
 11 ans Affairs.

12 (5) TECHNICAL ASSISTANCE.—The Secretary  
 13 may provide technical assistance to entities receiving  
 14 assistance under this section in planning and operat-  
 15 ing activities to be carried out under this chapter.

16 (d) LIMITATION.—Payments made under this chap-  
 17 ter may not be used for—

18 (1) making cash payments to intended recipi-  
 19 ents of tobacco use cessation services;

20 (2) purchasing or improving land, purchasing,  
 21 constructing, or permanently improving (other than  
 22 minor remodeling) any building or other facility, or  
 23 purchasing major medical equipment;

1           (3) satisfying any requirement for the expendi-  
2           ture of non-Federal funds as a condition of the re-  
3           ceipt of Federal funds; or

4           (4) providing financial assistance to any entity  
5           other than a public or private entity.

6           (e) APPLICATION.—The Secretary may make pay-  
7           ments under this section to an entity for a fiscal year only  
8           if—

9           (1) the entity submits to the Secretary an appli-  
10          cation for such payments;

11          (2) the application contains a plan that meets  
12          the requirements proscribed by the Secretary;

13          (3) the application contains such assurances as  
14          the Secretary may require regarding compliance with  
15          the requirements of this chapter;

16          (4) the application is in such form and is sub-  
17          mitted by such date as the Secretary may require;  
18          and

19          (5) the applicant agrees to permit and cooper-  
20          ate with Federal investigations, including audits, un-  
21          dertaken in accordance with regulations promulgated  
22          by the Secretary.

23          (f) FUNDING.—The Secretary shall use amounts  
24          made available under section 101(d)(2)(B) for a fiscal  
25          year to carry out this section.

1 **SEC. 322. REPORTS, DATA, AND AUDITS.**

2 (a) DATA.—

3 (1) COLLECTION AND REPORTING.—A State  
4 shall collect and report data for a fiscal year and  
5 submit to the Secretary, not later than February 1  
6 of the succeeding fiscal year, a report that—

7 (A) describes the purposes for which the  
8 State expended payments made to the State  
9 under section 321;

10 (B) describes the extent of progress made  
11 by the State for purposes of such section;

12 (C) meets the conditions described in para-  
13 graph (2); and

14 (D) contains such additional information  
15 as determined necessary by the Secretary, and  
16 which is submitted in such form, as the Sec-  
17 retary may require.

18 (2) UNIFORM DATA SETS.—

19 (A) IN GENERAL.—The Secretary, in con-  
20 sultation with the States, shall develop sets of  
21 data for uniformly defining levels of youth and  
22 adult use of tobacco products (referred to as  
23 ‘uniform tobacco product use data items’). The  
24 Secretary shall develop formats for the uniform  
25 collecting and reporting of information on such  
26 items.

1 (B) LATER FISCAL YEARS.—In the case of  
2 fiscal year 2000 and each subsequent fiscal  
3 year, a condition under paragraph (1) for a  
4 State is that the State will, in accordance with  
5 the applicable format under subparagraph (A),  
6 collect during such year, and include in the re-  
7 port under paragraph (1), the necessary infor-  
8 mation for each of the tobacco product use data  
9 items.

10 (3) UNIFORM CRITERIA.—The Secretary, in  
11 consultation with the States, shall establish criteria  
12 for the uniform collection and reporting of data on  
13 activities authorized in section 321 with respect to  
14 which no uniform tobacco product use data items  
15 under paragraph (2) exist.

16 (4) PUBLIC INSPECTION OF REPORTS.—A con-  
17 dition under paragraph (1) for a fiscal year is that  
18 the State involved will make copies of the report  
19 submitted under such paragraph for the fiscal year  
20 available for public inspection, and will upon request  
21 provide a copy of the report to any individual for a  
22 charge not exceeding the cost of providing the copy.

23 (b) AUDITS.—

24 (1) FISCAL CONTROL AND ACCOUNTING PROCE-  
25 DURES.—Each State shall establish fiscal control

1 and fund accounting procedures as may be necessary  
2 to ensure the proper disbursal of and accounting for  
3 Federal funds paid to the State under section 321  
4 and funds transferred for use under this chapter.

5 (2) ANNUAL SUBMISSION.—Each State shall  
6 annually audit its expenditures from payments re-  
7 ceived under section 321. Such State audits shall be  
8 conducted by an entity independent of any agency  
9 administering a program funded under this chapter,  
10 and, in so far as practical, in accordance with the  
11 Comptroller General’s standards for auditing govern-  
12 mental organizations, programs, activities, and func-  
13 tions. Within 30 days following the date on which  
14 each audit is completed, the chief executive officer of  
15 the State shall transmit a copy of that audit to the  
16 Secretary.

17 (3) REPAYMENTS.—Each State shall, after  
18 being provided by the Secretary with adequate notice  
19 and an opportunity for a hearing within the State,  
20 repay to the United States amounts found not to  
21 have been expended in accordance with the require-  
22 ments of this chapter. If such repayment is not  
23 made, the Secretary shall, after providing the State  
24 with adequate notice and opportunity for a hearing  
25 within the State, offset such amounts against the

1 amount of any funding to which the State is or may  
2 become entitled under this subtitle.

3 (4) AVAILABILITY.—The State shall make cop-  
4 ies of the reports and audits required by this sub-  
5 section available for public inspection within the  
6 State.

7 (5) EVALUATION.—The Comptroller General of  
8 the United States shall, from time to time, evaluate  
9 the expenditures by the States of payments under  
10 this chapter in order to ensure that expenditures are  
11 consistent with the provisions of this chapter.

12 (6) REPORT BY SECRETARY.—Not later than  
13 October 1, 2000, the Secretary shall prepare and  
14 submit to the appropriate committees of Congress a  
15 report concerning the activities of the States that  
16 have received funds under this chapter and may in-  
17 clude in the report any recommendations for appro-  
18 priate changes in legislation.

19 (c) NONAPPLICATION OF CERTAIN PROVISIONS.—  
20 Title XVII of the Omnibus Budget Reconciliation Act of  
21 1981 shall not apply with respect to audits of funds allot-  
22 ted under this chapter.



**Subtitle B—Health Research  
Program**

**CHAPTER 1—NATIONAL FUND FOR  
HEALTH RESEARCH**

**SEC. 331. ESTABLISHMENT OF NATIONAL FUND FOR  
HEALTH RESEARCH.**

(a) ESTABLISHMENT.—There is established within the National Tobacco Trust Fund a fund, to be known as the “National Fund for Health Research” (hereafter in this section referred to as the “Fund”), consisting of such amounts as are transferred to the Fund under subsection (b) and any interest earned on investment of amounts in the Fund.

(b) TRANSFERS TO FUND.—There are authorized to be appropriated amounts provided under section 101(d)(2)(C) to carry out this section.

(c) OBLIGATIONS FROM FUND.—Appropriations shall be made under this section to each member Institute or Center of the National Institutes of Health in proportion to the amount otherwise annually appropriated for each such Institute or Center.

(d) SPENDING PRIORITIES.—The director of each member Institute or Center of the National Institutes of Health shall appropriately prioritize the use of funds made available from the Fund for tobacco-related diseases and

1 conditions, including those affecting women and minori-  
2 ties.

3       **CHAPTER 2—TOBACCO PREVENTION**  
4                   **RESEARCH**

5       **SEC. 335. NATIONAL TOBACCO RESEARCH TASK FORCE.**

6           (a) ESTABLISHMENT.—The Secretary shall establish  
7 a National Tobacco Research Task Force (referred to in  
8 this subtitle as the ‘National Task Force’) to foster coordi-  
9 nation among public health agencies, academic bodies, and  
10 community groups that conduct or support tobacco-related  
11 biomedical, clinical, behavioral, health services, public  
12 health and community, and surveillance and epidemiology  
13 research activities.

14          (b) COMPOSITION.—The National Task Force shall  
15 be composed of—

16               (1) the Surgeon General;

17               (2) the Director of the Office of Smoking and  
18 Health of the Centers for Disease Control and Pre-  
19 vention;

20               (3) the Administrator of the Agency for Health  
21 Care Policy and Research;

22               (4) the Director of the National Institutes of  
23 Health;

24               (5) the Director of the Office of Minority  
25 Health;

1 (6) the Commissioner on Food and Drugs;

2 (7) the Administrator of the Environmental  
3 Protection Agency;

4 (8) two representatives from non-governmental  
5 public health or tobacco control organizations; and

6 (9) two representatives from State or local gov-  
7 ernment public health agencies and offices.

8 A vacancy on the Task Force shall not effect its ability  
9 to conduct business.

10 (c) CHAIR.—The National Task Force shall be  
11 chaired by the Secretary or the designee of the Secretary.

12 (d) DUTIES.—The Task Force shall—

13 (1) in accordance with research agenda rec-  
14 ommended under section 336, coordinate and advise  
15 tobacco-related research activities among Federal  
16 public health service agencies;

17 (2) collect and make available to States and  
18 communities, through publication and other appro-  
19 priate means, evidence-based tobacco-related re-  
20 search results and recommendations as to the prac-  
21 tical application of such results; and

22 (3) report on a biennial basis to the Secretary  
23 and the Committee on Labor and Human Resources  
24 of the Senate, and the Committee on Commerce of

1 the House of Representatives on the current and  
2 planned activities of participating Federal agencies.

3 **SEC. 336. RESEARCH ACTIVITIES.**

4 (a) IN GENERAL.—The Director of the Centers for  
5 Disease Control and Prevention, in conjunction with the  
6 National Tobacco Research Task Force, shall carry out  
7 tobacco-related research, including research on—

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

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

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

19 (4) the prevention of diseases and conditions  
20 most associated with the use of tobacco products;

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

23 (6) the relationship between the use of tobacco  
24 products and cancer, particularly among minorities;

(c) **TRIGGER.**—No expenditures shall be made under this section during any fiscal year in which the annual amount appropriated for the Centers for Disease Control and Prevention is less than the amount so appropriated for the prior fiscal year.

(a) DUTIES.—The Director of the Centers for Disease Control and Prevention, working in consultation with the National Task Force, shall carry out tobacco-related surveillance and epidemiologic studies, including—

1           (1) the use of youth surveillance systems to  
2           monitor the use of all tobacco products by individ-  
3           uals under the age of 18, including brands used to  
4           enable determinations to be made of company-spe-  
5           cific youth market share;

6           (2) the conduct of State-specific youth tobacco  
7           use surveys to monitor trends in the use of tobacco  
8           products in all States and the District of Columbia;

9           (3) the conduct of tobacco product surveillance  
10          to monitor changes in the design, toxicity and bio-  
11          logical affects of tobacco products;

12          (4) the conduct of social and policy monitoring  
13          of the effects of legislative, policy and media pro-  
14          grams on tobacco use;

15          (5) the conduct of environmental tobacco smoke  
16          exposure monitoring, including biochemical monitor-  
17          ing of such exposure;

18          (6) adult surveillance to track the adult use of  
19          all tobacco products;

20          (7) the use of cancer registries to monitor the  
21          effects of tobacco use and anti-tobacco programs on  
22          cancer incidence;

23          (8) the use of State-based behavioral risk factor  
24          surveillance to monitor health risk behaviors associ-  
25          ated with tobacco use, including youth drug use; and

1           (9) the use of State-based pregnancy risk as-  
 2           sessments to monitor the effects of tobacco use on  
 3           pregnancy outcomes.

4           (b) AUTHORIZATION OF APPROPRIATIONS.—There  
 5           are authorized to be appropriated amounts provided under  
 6           section 101(d)(2)(b) to carry out this section.

7           (c) TRIGGER.—No expenditures shall be made under  
 8           this section during any fiscal year in which the annual  
 9           amount appropriated for the Centers for Disease Control  
 10          and Prevention is less than the amount so appropriated  
 11          for the prior fiscal year.

## 12                   **Subtitle C—Miscellaneous** 13                   **Provisions**

### 14   **SEC. 341. LIMITATION ON ADMINISTRATIVE COSTS.**

15          (a) FEDERAL ADMINISTRATION.—The Secretary may  
 16          use not to exceed—

17               (1) 4 percent of the amount made available  
 18               under each program under this title in the first fis-  
 19               cal year for which amounts are made available; and

20               (2) 3 percent of the amount made available  
 21               under each program under this title in the 2nd and  
 22               each subsequent fiscal year for which amounts are  
 23               made available;

1 for the administration (exclusive of scientific and pro-  
2 grammatic technical assistance) of each such program  
3 under this title.

4 (b) STATE ADMINISTRATION.—A State may use not  
5 to exceed—

6 (1) 4 percent of the amount made available to  
7 the State under any program under this title in the  
8 first fiscal year for which amounts are made avail-  
9 able; and

10 (2) 3 percent of the amount made available to  
11 the State under any program under this title in the  
12 2nd and each subsequent fiscal year for which  
13 amounts are made available;

14 for the administration of each such program.

15 **SEC. 342. 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 amounts provided  
21 under this title in accordance with the requirements  
22 of this title or the certifications otherwise provided  
23 by States under this title. The Secretary shall with-  
24 hold such funds until the Secretary finds that the



1 reason for the withholding has been removed and  
2 there is reasonable 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 amounts provided under this title in accordance  
8 with the requirements of this title or the certifi-  
9 cations otherwise provided under this title. Investiga-  
10 tions required by this paragraph shall be conducted  
11 within the affected State by qualified investigators.

12 (3) RESPONSE TO COMPLAINTS.—The Secretary  
13 shall respond in an expeditious manner to com-  
14 plaints of a substantial or serious nature that a  
15 State has failed to use funds in accordance with the  
16 requirements of this title or the certifications other-  
17 wise provided under this title.

18 (4) MINOR FAILURES.—The Secretary may not  
19 withhold funds under paragraph (1) from a State  
20 for a minor failure to comply with the requirements  
21 of this title or certifications otherwise provided  
22 under this title.

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 title in order to evaluate compliance with  
3        the requirements of this title and certifications oth-  
4        erwise provided under this title.

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        title by a State in order to insure compliance with  
9        the requirements of this title and certifications oth-  
10       otherwise provided under this title.

11       (c) AVAILABILITY OF RECORDS.—Each State, and  
12       each entity which has received funds from amounts pro-  
13       vided under this title to a State, shall make appropriate  
14       books, documents, papers, and records available to the  
15       Secretary or the Comptroller General of the United States,  
16       or any of their duly authorized representatives, for exam-  
17       ination, copying, or mechanical reproduction on or off the  
18       premises of the appropriate entity upon a reasonable re-  
19       quest therefore.

20       (d) LIMITATION.—

21            (1) IN GENERAL.—In conducting any investiga-  
22       tion 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 amounts made available to the State under this  
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. 343. NONDISCRIMINATION.**

10 (a) PROGRAMS AND ACTIVITIES.—

11 (1) IN GENERAL.—For the purpose of applying  
12 the prohibitions against discrimination on the basis  
13 of age under the Age Discrimination Act of 1975, on  
14 the basis of handicap under section 504 of the Reha-  
15 bilitation Act of 1973, on the basis of sex under title  
16 IX of the Education Amendments of 1972, or on the  
17 basis of race, color, or national origin under title VI  
18 of the Civil Rights Act of 1964, programs and activi-  
19 ties funded in whole or in part with funds made  
20 available under this title are considered to be pro-  
21 grams and activities receiving Federal financial as-  
22 sistance.

23 (2) SEX OR RELIGION.—No person shall on the  
24 ground of sex or religion be excluded from participa-  
25 tion in, be denied the benefits of, or be subjected to

1 discrimination under, any program or activity fund-  
2 ed in whole or in part with funds made available  
3 under this title.

4 (b) FAILURE TO COMPLY.—Whenever the Secretary  
5 finds that a State, or an entity that has received a pay-  
6 ment from a State under this title, has failed to comply  
7 with a provision of law referred to in subsection (a)(1),  
8 with subsection (a)(2), or with an applicable regulation  
9 (including one prescribed to carry out subsection (a)(2)),  
10 the Secretary shall notify the chief executive officer of the  
11 State and shall request such officer to secure compliance.  
12 If within a reasonable period of time, not to exceed 60  
13 days, the chief executive officer fails or refuses to secure  
14 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 mat-  
25 ter is referred to the Attorney General pursuant to sub-

1 section (b)(1), or whenever he has reason to believe that  
 2 a State or an entity is engaged in a pattern or practice  
 3 in violation of a provision of law referred to in subsection  
 4 (a)(1) or in violation of subsection (a)(2), the Attorney  
 5 General may bring a civil action in any appropriate district  
 6 court of the United States for such relief as may be appro-  
 7 priate, including injunctive relief.

8 **SEC. 344. INTERNATIONAL TOBACCO CONTROL.**

9 (a) GOVERNMENTAL ACTIVITIES.—

10 (1) IN GENERAL.—The Secretary (in consulta-  
 11 tion with the Secretary of State and the Secretary  
 12 of the Treasury, and acting through the Director of  
 13 the Centers for Disease Control and Prevention (re-  
 14 ferred to in this section as the “Director”)) shall  
 15 provide bilateral assistance to foreign countries, and  
 16 multilateral assistance to assist such countries in re-  
 17 ducing and preventing the use of tobacco in foreign  
 18 countries and in promoting tobacco use cessation.  
 19 Such assistance shall be focused on preventing the  
 20 use of tobacco products by minors.

21 (2) USE.—In carrying out paragraph (1), the  
 22 Secretary may provide funding and technical assist-  
 23 ance, in a manner that encourages program develop-  
 24 ment based on the cultural environment of the coun-  
 25 try involved, to—

1           (A) strengthen the coordination of inter-  
2           national tobacco product use prevention, reduc-  
3           tion, and cessation data collection and analysis;

4           (B) assist countries to design, implement  
5           and evaluate effective anti-tobacco strategies  
6           that are based on evidence from successful pro-  
7           grams used in the United States or other coun-  
8           tries; or

9           (C) provide leadership in the global harmo-  
10          nization of tobacco product use prevention, re-  
11          duction, and cessation policies, particularly  
12          those that control smuggling, prevent children  
13          from using tobacco products and protect the  
14          public from exposure to environmental tobacco  
15          smoke.

16          (3) PARTNERSHIPS.—In providing multilateral  
17          assistance under this subsection, the Director may  
18          provide for the establishment of partnerships be-  
19          tween entities and organization such as the World  
20          Bank, the World Health Organization, the United  
21          Nations International Children’s Emergency Fund,  
22          and other similar organization, to create linkages to  
23          advance tobacco control practices globally.

24          (4) ADMINISTRATION.—

1 (A) APPLICATION.—To be eligible to re-  
2 ceive assistance under this subsection, an entity  
3 shall prepare and submit to the Director an ap-  
4 plication at such time, in such manner and con-  
5 taining such information as the Director may  
6 require. The evaluation of such applications  
7 shall be made based on selective and appro-  
8 priate criteria determined appropriate by the  
9 Director.

10 (B) TECHNICAL ASSISTANCE.—The Direc-  
11 tor shall provide technical assistance and sci-  
12 entific support in carrying out the activities de-  
13 scribed in paragraph (1).

14 (5) AUTHORIZATION OF APPROPRIATIONS.—  
15 There are authorized to be appropriated amounts  
16 provided under section 101(d)(2)(D) to carry out  
17 this section.

18 (b) NONGOVERNMENTAL ACTIVITIES.—

19 (1) PURPOSE.—The purpose of this subsection  
20 is to establish the American Center on Global  
21 Health and Tobacco (referred to in this subsection  
22 as “ACT”). ACT shall assist organizations in other  
23 countries to reduce and prevent the use of tobacco.  
24 Activities ACT supports shall include—

1 (A) public education programs that inform  
 2 the public about the hazards of tobacco use and  
 3 of environmental tobacco smoke;

4 (B) mass media campaigns, including paid  
 5 counter-tobacco advertisements, to reverse the  
 6 image appeal of pro-tobacco messages, espe-  
 7 cially those that glamorize and “Westernize” to-  
 8 bacco use to young people; and

9 (C) education about the economic and soci-  
 10 etal costs of tobacco use, and effective tobacco  
 11 use prevention and cessation strategies that are  
 12 appropriate for the country involved.

13 (2) ESTABLISHMENT.—

14 (A) IN GENERAL.—There is hereby estab-  
 15 lished in the District of Columbia a private,  
 16 nonprofit corporation to be known as the Amer-  
 17 ican Center on Global Health and Tobacco.  
 18 ACT shall—

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

21 (ii) except as otherwise provided in  
 22 this section, be subject to, and have all the  
 23 powers conferred upon a nonprofit corpora-  
 24 tion by the District of Columbia Nonprofit



1 Corporation Act (D.C. Code section 29-501  
2 et seq.).

3 (B) RELATION TO UNITED STATES.—

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

9 (C) RELATION TO NONGOVERNMENTAL OR-  
10 GANIZATIONS.—ACT shall have a limited staff,  
11 and, to the maximum extent practicable, utilize  
12 the available experience and talents of non-  
13 governmental organizations with specialized ex-  
14 perience in health, behavioral sciences, edu-  
15 cation, media, marketing and tobacco.

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

23 (3) AUTHORIZATION OF APPROPRIATIONS.—

24 There are authorized to be appropriated an amount

1 equal to 50 percent amounts provided under section  
2 101(d)(2)(D) to carry out this section.

3 (4) REQUIREMENTS FOR ELIGIBILITY.—

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

7 (B) COMPLIANCE.—

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

13 (ii) USE OF FUNDS.—ACT may only  
14 fund programs for private sector or quasi-  
15 governmental groups for programs which  
16 are consistent with the purposes of this  
17 subsection.

18 (C) SALARIES AND COMPENSATION.—Offi-  
19 cers and employees of ACT may not receive any  
20 salary or other compensation from any source  
21 other than ACT for services performed for  
22 ACT.

23 (D) STOCKS AND DIVIDENDS.—ACT shall  
24 not issue any shares of stock or declare or pay  
25 any dividends.

1 (E) AUDITS.—

2 (i) PUBLIC ACCOUNTS.—The accounts  
3 of ACT shall be audited annually in ac-  
4 cordance with generally accepted auditing  
5 standards.

6 (ii) COMPTROLLER GENERAL.—The  
7 financial transactions of ACT for each fis-  
8 cal year may be audited by the Comptroller  
9 General, and a report of each such audit  
10 submitted to Congress. A copy of each re-  
11 port shall be furnished to the Secretary  
12 and to ACT at the time the report is sub-  
13 mitted to Congress.

14 (F) RECORDKEEPING.—ACT shall ensure  
15 that each recipient of assistance from ACT  
16 under this subsection keeps such records as  
17 may be reasonably necessary to fully disclose  
18 the amount and the disposition by such recipi-  
19 ent of the proceeds of such assistance, the total  
20 cost of the project or undertaking in connection  
21 with which such assistance is given or used, and  
22 the amount and nature of that portion of the  
23 cost of the project or undertaking supplied by  
24 other sources, and such other records as will fa-  
25 cilitate an effective audit. ACT shall ensure

that it, or any of its duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of each recipient of assistance from ACT that are pertinent to assistance provided through ACT under this subsection.

## **TITLE IV—LIABILITY PROVISIONS AND CONSENT DECREES**

### **SEC. 400. DISMISSAL OF AND LIMITATIONS ON CIVIL ACTIONS.**

#### **(a) STATE ATTORNEY GENERAL ACTIONS.—**

(1) **PENDING ACTIONS.**—With respect to a State, to be eligible to receive funds under section 111, the attorney general for such State shall resolve any civil action seeking recovery for expenditures attributable to the treatment of tobacco-related illnesses and conditions that has been commenced by the State against a manufacturer, distributor, or retailer of a tobacco product and is pending on the date of enactment of this Act.

(2) **FUTURE ACTIONS BASED ON PRIOR CONDUCT.**—With respect to a State, to be eligible to receive funds under section 111, the attorney general for such State shall agree that the State will not

1 commence a civil action after the date of enactment  
2 of this Act that is based on the conduct of a partici-  
3 pating manufacturer, distributor or retailer of a to-  
4 bacco product that occurred prior to the date of en-  
5 actment of this Act seeking recovery for expendi-  
6 tures attributable to the treatment of tobacco in-  
7 duced illnesses and conditions against such a manu-  
8 facturer, distributor or retailer.

9 (b) STATE OPTION FOR ONE-TIME OPT OUT.—

10 (1) IN GENERAL.—The Secretary shall establish  
11 procedures under which the attorney general of a  
12 State may, not later than 1 year after the date of  
13 enactment of this Act, elect not to resolve an action  
14 described in subsection (a)(1) or not enter into an  
15 agreement under subsection (a)(2). A State whose  
16 attorney general that makes such an election shall  
17 not be eligible to receive payments from the Trust  
18 Fund under section 111. Procedures under this  
19 paragraph shall permit such a State to make such  
20 an election on a one-time basis.

21 (2) EXTENSION.—In the case of a State that  
22 has secured a judgment against a manufacturer, dis-  
23 tributor or retailer of a tobacco product in an action  
24 described in subsection (a)(1) prior to or during the  
25 period described in paragraph (1), and such judg-

1       ment has been appealed by such manufacturer, dis-  
2       tributor, or retailer, such period shall be extended  
3       during the pendency of the appeal and for an addi-  
4       tional period as determined appropriate by the Sec-  
5       retary.

6           (3) APPLICATION TO CERTAIN STATES.—A  
7       State that has resolved an action described in sub-  
8       section (a)(1) with a manufacturer, distributor or re-  
9       tailer of a tobacco product prior to the date of en-  
10      actment of this Act may not make an election de-  
11      scribed in paragraph (1) if, as part of the resolution  
12      of such action, the State agreed that the enactment  
13      of any national tobacco settlement legislation would  
14      supersede the provisions of the resolution.

15      (c) RULES OF CONSTRUCTION.—

16           (1) POST ENACTMENT CLAIMS.—Nothing in  
17      this title shall be construed to limit the ability of a  
18      State to commence an action against a participating  
19      manufacturer, distributor or retailer of a tobacco  
20      product with respect to a claim that is based on the  
21      conduct of such manufacturer, distributor or retailer  
22      that occurred after the date of enactment of this  
23      Act.

24           (2) NO LIMITATION ON INDIVIDUALS.—Nothing  
25      in this section shall be construed to limit the right

1 of an individual or group of individuals to commence  
2 a civil action for past, present, or future conduct by  
3 manufacturers, distributors or retailers of tobacco  
4 products.

5 (d) DEFINITION.—As used in this section, the term  
6 “participating manufacturer” means a manufacturer of  
7 tobacco products that has entered into a consent decree  
8 under section 411.

9 (e) OTHER ACTIONS.—Any civil action for claims  
10 based on addiction to or dependence on a tobacco product  
11 filed by the Castano Plaintiffs Legal Committee that is  
12 pending against a manufacturer that has entered into a  
13 consent decree under section 411, is preempted, termi-  
14 nated, and settled in consideration for the establishment  
15 of the National Tobacco Cessation Program described in  
16 section 321.

## 17 **Subtitle A—Liability Provisions**

### 18 **SEC. 401. NATIONAL VICTIMS’ COMPENSATION FUND.**

19 (a) ESTABLISHMENT.—

20 (1) IN GENERAL.—The Secretary of the Treas-  
21 ury, using amounts made available under section  
22 101(d)(2)(D), shall establish a fund within the Na-  
23 tional Tobacco Trust Fund to be known as the “Na-  
24 tional Victims’ Compensation Fund” (referred to in  
25 this section as the “Fund”) to be used by the Attor-

1       ney General solely for tobacco-related liability judg-  
2       ments and settlements that are based on the conduct  
3       of a manufacturer.

4           (2) BASE PAYMENT.—The Secretary of the  
5       Treasury shall annually deposit into the Fund  
6       amounts made available for such purposes under  
7       section 101(d)(2)(D).

8           (3) CONTINGENCY RESERVE ACCOUNT.—

9           (A) IN GENERAL.—As part of the Fund,  
10       the Secretary of the Treasury shall establish a  
11       Contingency Reserve Account (referred to in  
12       this section as the ‘Account’). The Secretary  
13       shall deposit into the Account any amounts re-  
14       maining in the Fund and unobligated at the  
15       end of each fiscal year. Such Account shall be  
16       established as an interest-bearing account.

17          (B) USE OF ACCOUNT.—Amounts con-  
18       tained in the Account shall be used as provided  
19       for in subsection (d)(2).

20          (C) PUBLIC HEALTH ACTIVITIES.—With  
21       respect to any fiscal year, if amounts in the Ac-  
22       count exceed \$20,000,000,000, the Attorney  
23       General, in consultation with the Secretary,  
24       shall determine whether any such excess



1           amounts should be transferred to the Secretary  
2           for use under title III.

3           (b) USE OF FUND.—The Attorney General shall use  
4 amounts in the Fund to pay the damages associated with  
5 any judgments or settlements for tobacco-related civil ac-  
6 tions that are based on the conduct of a manufacturer that  
7 occurred prior to the date of enactment of this Act (includ-  
8 ing actions under section 1964 of title 18, United States  
9 Code).

10          (c) PROCEDURE.—

11           (1) APPLICATION.—Upon the settlement of a  
12 tobacco-related civil action described in subsection  
13 (b), or upon the entry of a judgment in such an ac-  
14 tion, in a manner that provides for the payment of  
15 amounts to compensate the plaintiff for damages  
16 sustained as a result of a tobacco-related condition  
17 or illness, the plaintiff shall submit to the Attorney  
18 General an application for the payment of the  
19 amount of such settlement or judgment from the  
20 Fund.

21           (2) CERTIFICATION.—Not later than 90 days  
22 after the date on which an application is submitted  
23 under paragraph (1), the Attorney General shall de-  
24 termine the validity of such application and any

1 amount for which the applicant is eligible under this  
2 section.

3 (3) PAYMENT.—Not later than 30 days after  
4 making a determination that an applicant under  
5 paragraph (1) is eligible for a payment under this  
6 section, the Attorney General shall make a lump  
7 sum payment from the Fund to the applicant.

8 (4) SMALL CLAIMANTS.—The Attorney General  
9 shall establish procedures to ensure that priority is  
10 given under this section to the payment of claims of  
11 individuals and small classes of claimants.

12 (d) LIABILITY FOR CLAIMS IN EXCESS OF AMOUNTS  
13 IN FUND.—

14 (1) LIABILITY OF MANUFACTURERS.—

15 (A) IN GENERAL.—If, with respect to a fis-  
16 cal year, the aggregate amount of all payments  
17 to be made to eligible applicants under sub-  
18 section (b) exceed the amount in the Fund for  
19 such year, such excess amount shall, except as  
20 provided in subparagraph (B), be paid by man-  
21 ufacturers.

22 (B) LIMITATION ON AMOUNT.—The aggre-  
23 gate amount of all payments described in sub-  
24 paragraph (A) (excluding amounts paid through  
25 the Fund) for which manufacturers shall be lia-

1           ble in any fiscal year shall not exceed  
2           \$4,000,000,000. Amounts paid by a manufac-  
3           turer to settle a civil action commenced by a  
4           State prior to the date of enactment of this Act  
5           shall not apply in determining the liability of a  
6           manufacturer under this subparagraph.

7           (2) USE OF CONTINGENCY RESERVE AC-  
8           COUNT.—In any fiscal year in which the aggregate  
9           amount of all payments to be made to eligible appli-  
10          cants under subsection (b) exceed the sum of the  
11          amount in the Fund for such year and the limitation  
12          described in paragraph (2)(B), such excess amount  
13          shall be paid from amounts contained in the Ac-  
14          count.

15          (3) PAYMENT OF EXCESS.—If the Attorney  
16          General determines under subsection (b) that  
17          amounts to be paid to eligible applicants for a fiscal  
18          year exceed the sum of the amounts available in the  
19          Fund for such year, the limitation described in para-  
20          graph (1)(B), and the amounts contained in the Ac-  
21          count, the Attorney General shall provide for the  
22          payment of any unpaid amounts in the subsequent  
23          fiscal year.

24          (e) APPLICATION TO CERTAIN MANUFACTURERS.—  
25          The provisions of this section shall apply to a manufac-

1 turer that begins manufacturing tobacco products after  
 2 the date of enactment of this Act, except that if such a  
 3 manufacturer fails to make payments as provided for in  
 4 subsection (d)(1), such manufacturer shall pay to the At-  
 5 torney General an amount equal to 150 percent of the  
 6 amount that such manufacturer would have paid under  
 7 such subsection.

8 (f) REGULATIONS.—The Attorney General shall pro-  
 9 mulgate regulations to establish procedures for the imple-  
 10 mentation and enforcement of this section.

11 (g) LIMITATION ON APPLICATION OF CAP.—

12 (1) IN GENERAL.—The provisions of subsection  
 13 (d) shall not apply with respect to any judgment or  
 14 settlement in any civil action where it has been de-  
 15 termined that the manufacturer involved—

16 (A) has failed to make payments on assess-  
 17 ment under section 102;

18 (B) has failed to disclose documents in ac-  
 19 cordance with discovery requests or section 404;

20 (C) has failed to enter into or comply with  
 21 consent decrees under subtitle B; or

22 (D) has otherwise failed to comply with the  
 23 provisions of this Act, or an amendment made  
 24 by this Act.

1           (2) YEAR INVOLVED.—If, with respect to a  
 2           manufacturer to which paragraph (1) applies, the  
 3           cap contained in subsection (d)(1)(B) is not reached  
 4           for the year involved, the limitation in such para-  
 5           graph (1) shall apply to such manufacturer in the  
 6           first year in which the cap is reached.

7           (h) DISTRIBUTORS AND RETAILERS.—Nothing in  
 8           this section shall be construed as limiting the liability of  
 9           any distributor or retailer of a tobacco product.

10   **SEC. 402. RULE OF CONSTRUCTION.**

11           Nothing in this title shall be construed as granting  
 12           immunity to any manufacturer of tobacco products with  
 13           respect to tobacco-related civil actions for damages sus-  
 14           tained as a result of tobacco-related conditions or illnesses,  
 15           or for criminal actions relating to tobacco products, re-  
 16           gardless of whether the conduct involved occurred prior  
 17           to or after the date of enactment of this Act.

18   **SEC. 403. ATTORNEY'S FEES AND EXPENSES.**

19           (a) ARBITRATION PANEL.—

20           (1) ESTABLISHMENT.—For the purpose of  
 21           awarding of attorneys' fees and expenses relating to  
 22           litigation, involving a claim brought by a Federal,  
 23           State or local government entity, affected by, or  
 24           legal services that resulted in whole or in part in,

1       this Act, there is established an Arbitration Panel  
2       which shall consist of—

3               (A) 3 members to be appointed by the  
4       Trustees;

5               (B) 1 member to be appointed by the par-  
6       ticipating manufacturers;

7               (C) 1 member to be appointed by the At-  
8       torneys General of the States who were signato-  
9       ries to the Memorandum of Understanding  
10      dated June 20, 1997, by and between tobacco  
11      manufacturers, the Attorneys General, and pri-  
12      vate attorneys; and

13              (D) 1 member to be appointed by the pri-  
14      vate attorneys, including attorneys representing  
15      plaintiffs in the case of Dianne Castano v.  
16      American Tobacco Company.

17      (2) OPERATION.—

18              (A) ESTABLISHMENT.—The members of  
19      the Arbitration Panel shall be appointed not  
20      later than 30 days after the effective date of  
21      this Act.

22              (B) PROCEDURES.—Not later than 30  
23      days after the date on which all members of the  
24      Arbitration Panel are appointed under para-  
25      graph (1), the Panel shall establish the proce-

1           dures under which the Panel will operate which  
2           shall include—

3                   (i) a requirement that any finding by  
4                   the Arbitration Panel must be in writing  
5                   and supported by written reasons;

6                   (ii) procedures for the exchanging of  
7                   exhibits and witness lists by the various  
8                   claimants for awards;

9                   (iii) to the maximum extent prac-  
10                  ticable, requirements that proceedings be-  
11                  fore the Panel be based on affidavits rath-  
12                  er than live testimony; and

13                  (iv) a requirement that all claims be  
14                  submitted to the Arbitration Panel not  
15                  later than 3 months after the effective date  
16                  of this Act and a determination made by  
17                  the Panel with respect to such claims not  
18                  later than 7 months after such date of en-  
19                  actment.

20           (3) RIGHT TO PETITION.—Any individual attor-  
21           ney or group of attorneys involved in litigation af-  
22           fected by this Act shall have the right to petition the  
23           Arbitration Panel for attorneys' fees and expenses.

1           (4) CRITERIA.—In making any award pursuant  
2           to this section, the Arbitration Panel shall consider  
3           the following criteria:

4                   (A) The time and labor required by the  
5                   claimant.

6                   (B) The novelty and difficulty of the ques-  
7                   tions involved in the action for which the claim-  
8                   ant is making a claim.

9                   (C) The skill requisite to perform the legal  
10                  service involved properly.

11                  (D) The preclusion of other employment by  
12                  the attorney due to acceptance of the action in-  
13                  volved.

14                  (E) Whether the fee is fixed or a percent-  
15                  age.

16                  (F) Time limitations imposed by the client  
17                  or the circumstances.

18                  (G) The amount involved and the results  
19                  obtained.

20                  (H) The experience, reputation, and ability  
21                  of the attorneys involved.

22                  (I) The undesirability of the action.

23                  (J) Whether the fee is excessive in relation  
24                  to the overall judgment or settlement award.



1           (5) APPEAL AND ENFORCEMENT.—The findings  
2       of the Arbitration Panel shall be final, binding, non-  
3       appealable, and payable within 30 days after the  
4       date on which the finding is made public, except that  
5       if an award is to be paid in installments, the first  
6       installment shall be payable within such 30 day pe-  
7       riod and succeeding installments shall be paid annu-  
8       ally thereafter.

9       (b) SOURCE AND PAYMENT OF AWARDS.—In no  
10      event shall any award of the Arbitration Panel be paid  
11      from, credited against, or otherwise affect in any way any  
12      fee payments that are required to be made by any partici-  
13      pating manufacturer under section 102 or under any other  
14      provision of this Act. Any such award shall be paid by  
15      participating manufacturers (except a manufacturer de-  
16      scribed in section 102(a)(7)(B)) pursuant to an allocation  
17      agreement among such manufacturers.

18      (c) VALIDITY AND ENFORCEABILITY OF PRIVATE  
19      AGREEMENTS.—Notwithstanding any other provision of  
20      this Act, nothing in this section shall be construed to abro-  
21      gate or restrict in any way the rights of any parties to  
22      mediate, negotiate, or settle any fee or expense disputes  
23      or issues to which this section applies, or to enter into  
24      private agreements with respect to the allocation or divi-

1 sion of fees among the attorneys party to any such agree-  
2 ment.

3 (d) DISCLOSURE.—The Secretary shall promulgate  
4 regulations for the public disclosure of any award of attor-  
5 neys' fees under this section.

6 **SEC. 404. PUBLIC DISCLOSURE OF TOBACCO INDUSTRY**  
7 **DOCUMENTS.**

8 (a) FINDINGS.—Congress finds that—

9 (1) the American tobacco industry has made  
10 claims of attorney-client privilege, attorney work  
11 product, and trade secrets to protect from public  
12 disclosure thousands of internal documents sought  
13 by civil litigants;

14 (2) a number of courts have found that these  
15 claims of privilege were not made in good faith; and

16 (3) to promote understanding by the public of  
17 the tobacco industry's research and practices, a  
18 prompt and full exposition of tobacco documents will  
19 further the purposes of this Act.

20 (b) APPLICABILITY.—To be eligible to be issued a li-  
21 cense to manufacture tobacco products under section 222,  
22 a manufacturer shall comply with the provisions of this  
23 section.

24 (c) NATIONAL TOBACCO DOCUMENT DEPOSITORY.—  
25 Manufacturers of tobacco products shall, not later than

1 60 days after the date of enactment of this Act, establish  
 2 a National Tobacco Document Depository (in this section  
 3 referred to as the “Depository”). Such Depository shall  
 4 be located in the Washington, D.C. area.

5 (d) SUBMISSION OF DOCUMENTS.—Not later than 60  
 6 days after the date on which the Depository is established  
 7 under subsection (c), each manufacturer of a tobacco  
 8 product shall submit to the Depository every existing doc-  
 9 ument (including any document subject to a claim of at-  
 10 torney-client privilege, attorney work product, or trade se-  
 11 cret protection) in the manufacturer’s possession, custody,  
 12 or control—

13 (1) relating, referring, or pertaining to—

14 (A) any studies, research, or analysis of  
 15 any possible health or pharmacological effects  
 16 in humans or animals, including addiction, as-  
 17 sociated with the use of tobacco products or  
 18 components of tobacco products;

19 (B) the engineering, manipulation, or con-  
 20 trol of nicotine in tobacco products;

21 (C) the sale or marketing of tobacco prod-  
 22 ucts;

23 (D) any research involving safer or less  
 24 hazardous tobacco products;

25 (E) tobacco use by minors; or

1 (F) the relationship between advertising or  
 2 promotion and the use of tobacco products;

3 (2) produced, or ordered to be produced, by the  
 4 tobacco product manufacturer in any health-related  
 5 civil or criminal proceeding, judicial or administra-  
 6 tive; and

7 (3) that the National Tobacco Documents Re-  
 8 view Board (established under subsection (h)) deter-  
 9 mines is appropriate for submission to the Deposi-  
 10 tory.

11 (e) DOCUMENT IDENTIFICATION AND INDEX.—Docu-  
 12 ments submitted to the depository under this section shall  
 13 be sequentially numbered and marked to identify the to-  
 14 bacco manufacturer. Not later than 30 days after the date  
 15 on which such documents are submitted to the Depository,  
 16 each tobacco manufacturer shall supply the Depository  
 17 with a comprehensive document index which references the  
 18 applicable documents described in subsection (c)(1).

19 (f) PRIVILEGE AND TRADE SECRET CLAIMS.—

20 (1) IN GENERAL.—Any document that is sub-  
 21 ject to a claim by a tobacco manufacturer of attor-  
 22 ney-client privilege, attorney work product, or trade  
 23 secret protection shall be identified as such and shall  
 24 be submitted separately to the Depository. The com-  
 25 pliance with this section by a manufacturer shall not

1 be deemed to be a waiver of any applicable claim of  
2 privilege or trade secret protection.

3 (2) PRIVILEGE AND TRADE SECRET LOGS.—Not  
4 later than 90 days after the date on which the De-  
5 pository is established, each manufacturer shall sub-  
6 mit to the Depository a comprehensive log that iden-  
7 tifies on a document-by-document basis all docu-  
8 ments submitted to the Depository for which the  
9 manufacturer asserts attorney-client privilege, attor-  
10 ney work product, or trade secrecy. Any such claim  
11 shall be made by a manufacturer in good faith.

12 (3) REQUIREMENTS.—The log established  
13 under paragraph (2) shall—

14 (A) be organized in numerical order based  
15 upon the document identifier assigned to each  
16 document;

17 (B) with respect to each such document  
18 contained in the log, the log shall contain—

19 (i) a description of the document, in-  
20 cluding type of document, title of docu-  
21 ment, name and position or title of each  
22 author, addressee, and other recipient, the  
23 document date, the document purpose and  
24 general subject matter;

1                   (ii) an explanation of why the docu-  
2                   ment or a portion of the document is privi-  
3                   leged or subject to trade secret protection;  
4                   and

5                   (iii) a statement whether any previous  
6                   claim of privilege or trade secret was de-  
7                   nied and, if so, in what proceeding.

8           (4) REVIEW.—With respect to documents for  
9           which the manufacturer previously has asserted one  
10          or more of the privileges described in paragraph (2),  
11          or has asserted a claim of trade secret protection,  
12          the manufacturer shall conduct a good faith de novo  
13          review of such documents to determine whether such  
14          privilege or trade secret protection is appropriate.  
15          Each manufacturer shall submit a declaration, pur-  
16          suant to section 1746 of title 28, United States  
17          Code, by an individual with responsibility for the de  
18          novo review of such documents, the preparation of  
19          the privilege log and who has knowledge of its con-  
20          tents. The declarant shall attest to the manufactur-  
21          er's compliance with the requirements of this section  
22          pertaining to the review of documents and prepara-  
23          tion of a privilege log.

24           (5) PUBLIC AVAILABILITY.—Not later than 30  
25          days after the receipt of a log under this subsection,

1 the Depository shall make such log available for  
2 public inspection and review.

3 (g) DISCLOSURE BY THE DEPOSITORY.—Not later  
4 than 30 days after the receipt of a document that is not  
5 subject to a claim of attorney-client privilege, attorney  
6 work product, or trade secret protection, the Depository  
7 shall make the document available to the public using the  
8 Internet and other means.

9 (h) TOBACCO DOCUMENTS REVIEW BOARD.—

10 (1) IN GENERAL.—There shall be established a  
11 Tobacco Documents Review Board (referred to in  
12 this subsection as the “Board”) that shall consist of  
13 5 members to be appointed by the President with  
14 the advice and consent of the Senate.

15 (2) ADMINISTRATIVE PROVISIONS.—

16 (A) ELIGIBILITY.—To be eligible to serve  
17 as a member of the Board, a individual shall—

18 (i) be a citizen of the United States;

19 (ii) not be in violation of any Federal  
20 ethics or conflict of interest rules applica-  
21 ble to Federal appointees; and

22 (iii) have a demonstrated skill in the  
23 law.

1 (B) TERMS.—A member of the Board shall  
2 be appointed for a term of 7 years and shall be  
3 eligible for reappointment.

4 (C) STAFF.—The Board may hire such  
5 staff and establish such operating procedures as  
6 the Board determines to be necessary to carry  
7 out its functions under this section.

8 (3) RESPONSIBILITY FOR DEPOSITORY.—The  
9 Board shall maintain the Depository and, in con-  
10 sultation with the General Services Administration,  
11 establish guidelines and procedures for the establish-  
12 ment and operation of the Depository, including  
13 guidelines for the immediate disclosure of documents  
14 that are not subject to unresolved claims of privilege  
15 or trade secrecy. In establishing such guidelines and  
16 procedures, the Board shall ensure that the Deposi-  
17 tory is open to the public and maintained in a man-  
18 ner that permits it to be used as a resource for liti-  
19 gants, public health groups, and persons with an in-  
20 terest in tobacco industry records and research con-  
21 cerning smoking and health, addiction or nicotine  
22 dependency, safer or less hazardous cigarettes, and  
23 underage tobacco use and marketing.

24 (4) RESOLUTION OF DISPUTED PRIVILEGE AND  
25 TRADE SECRET CLAIMS.—



1           (A) IN GENERAL.—The Board, upon a pe-  
2           tition by any individual to resolve a claim relat-  
3           ing to the disclosure of a document to the pub-  
4           lic, shall determine whether to uphold or reject  
5           disputed claims of attorney-client privilege, at-  
6           torney work product, or trade secret protection  
7           with respect to documents submitted to the De-  
8           pository under subsection (f).

9           (B) DETERMINATION.—A determination  
10          under subparagraph (A) shall be made by a sin-  
11          gle member of the Board, in writing, and shall  
12          be subject to judicial review as specified in this  
13          section. All such determinations shall be based  
14          solely on consideration of the subject of the doc-  
15          ument involved and on written submissions  
16          from the person claiming that the document is  
17          privileged or protected by trade secrecy and  
18          from any person seeking disclosure of the docu-  
19          ment.

20          (C) PRIVILEGE.—In making determination  
21          under subparagraph (B), the Board shall apply  
22          the attorney-client privilege and the attorney  
23          work-product doctrine in a manner consistent  
24          with Federal law.

1           (D) TRADE SECRET.—In making deter-  
2           minations under subparagraph (B), the Board  
3           shall define “trade secret” as ‘any commercially  
4           valuable plan, formula, process or device that is  
5           used for making or preparing trade commod-  
6           ities and that can be said to be the end product  
7           of either innovation or substantial effort. There  
8           must be a direct relationship between the trade  
9           secret and the productive process.

10          (E) FINAL DETERMINATION.—The Board  
11          may uphold a claim of privilege or trade protec-  
12          tion with respect to a claim under this section  
13          in its entirety or, in its sole discretion, it may  
14          redact that portion of a document that it deter-  
15          mines is protected from public disclosure under  
16          this paragraph. Any decision of the Board shall  
17          be final unless judicial review is sought as pro-  
18          vided for in subparagraph (F). In the event  
19          that judicial review is sought, the Board’s deci-  
20          sion shall be stayed pending a final judicial de-  
21          cision.

22          (F) PETITION; RIGHT OF APPEAL.—

23               (i) IN GENERAL.—Any person may  
24               obtain judicial review of a final determina-  
25               tion of the Board under subparagraph (E)

1 by filing a petition for review with the  
2 United States Court of Appeals for the  
3 Federal Circuit within 30 days after the  
4 entry of such determination. A copy of the  
5 petition shall be transmitted by the Clerk  
6 of the Court to the Board. The Board shall  
7 file in the court the record of the proceed-  
8 ings on which the Board based its decision  
9 (including any documents reviewed by the  
10 Board in camera) as provided for in sec-  
11 tion 2112 of title 28, United States Code.  
12 Upon the filing of such a petition, the  
13 court shall have exclusive jurisdiction to af-  
14 firm or set aside the Board's decision, ex-  
15 cept that until the filing of the record the  
16 Board may modify or set aside its decision.

17 (ii) ADDITIONAL EVIDENCE AND AR-  
18 GUMENTS.—If a petitioner under clause (i)  
19 applies to the court for leave to adduce ad-  
20 ditional evidence or arguments with respect  
21 to the determination being reviewed and  
22 demonstrated to the satisfaction of the  
23 court that such additional evidence or ar-  
24 guments are material and that there were  
25 reasonable grounds for the failure to ad-

1           duce such evidence or arguments in the  
2           proceedings before the Board, the court  
3           may order the Board to provide additional  
4           opportunity for the presentation of evi-  
5           dence or arguments in such manner and  
6           upon such terms as the court determines  
7           to be proper. The Board may modify its  
8           findings or make new findings by reason of  
9           the additional evidence or arguments and  
10          shall file with the court such modified or  
11          new findings, and its recommendation, if  
12          any, for the modification or setting aside  
13          of the decision being reviewed.

14               (iii) STANDARD OF REVIEW; FINALITY  
15               OF JUDGMENTS.—With respect to a review  
16               by the court under this subparagraph, the  
17               Board’s findings of fact, if supported by  
18               substantial evidence on the record taken as  
19               a whole, shall be conclusive. The court  
20               shall review the Board’s legal conclusions  
21               on a de novo basis. The judgment of the  
22               court affirming or setting aside the  
23               Board’s decision shall be final, subject to  
24               review by the Supreme Court of the United  
25               States upon certiorari or certification, as

provided in section 1254 of title 28, United States Code.

(5) PUBLIC DISCLOSURE AFTER FINAL DECISION.—Not later than 30 days after the date of a final determination by the Board that a document, as redacted by the Board or in its entirety, is not protected from disclosure by a claim of attorney-client privilege, attorney work product, or trade secret protection, the Board shall direct the Depository to make the document available to the public. No Federal or State court shall have jurisdiction to review a claim of attorney-client privilege, attorney work product, or trade secret protection for a document that has lawfully been made available to the public pursuant to this paragraph.

(6) EFFECT OF NONDISCLOSURE DECISION ON JUDICIAL PROCEEDINGS.—The Board's decision that a document is protected by attorney-client privilege, attorney work product, or trade secret protection is binding only for the purpose of protecting the document from disclosure by the Depository. The decision by the Board shall not be construed to resolve a claim that a document should not be disclosed in a judicial proceeding.

(i) SANCTIONS.—

1           (1) REQUIREMENT OF GOOD FAITH.—

2           (A) IN GENERAL.—Each tobacco manufac-  
3           turer shall act in good faith and have a readily  
4           understood claim of privilege or trade secret  
5           protection based on fact and law as described in  
6           subsection (h)(4). If the Board determines that  
7           a tobacco manufacturer has not acted in good  
8           faith with full knowledge of the truth of the  
9           facts asserted and with a reasonable basis  
10          under existing law, the manufacturer shall be  
11          assessed costs, which shall include the full ad-  
12          ministrative costs of handling the claim of privi-  
13          lege, and all attorneys' fees incurred by the  
14          Board and any party contesting the privilege.

15          (B) CIVIL PENALTIES.—With respect to a  
16          manufacturer that has failed to act in good  
17          faith as required under subparagraph (A), the  
18          Board may impose civil penalties of not to ex-  
19          ceed \$50,000 per violation if it determines that  
20          the manufacturer knowingly acted with the in-  
21          tent to delay, frustrate, defraud, or obstruct the  
22          Board's determination of privilege, attorney  
23          work product, or trade secret protection claims.

24          (2) FAILURE TO PRODUCE.—The Board may  
25          impose a civil penalty upon the failure of a tobacco

1 manufacturer to produce indexes and documents in  
2 compliance with this section, of not to exceed  
3 \$50,000 per violation.

4 (3) SEPARATE VIOLATIONS.—For purposes of  
5 this subsection, a separate violation shall be deemed  
6 to have occurred for each document the manufac-  
7 turer has failed to produce in a timely manner.

8 (4) LIMITATION.—The maximum penalty that  
9 may be imposed on a manufacturer under this sub-  
10 section for a related series of violations is  
11 \$5,000,000.

12 (5) AMOUNT OF PENALTY.—In determining the  
13 amount of any civil penalty under this subsection,  
14 the Board shall consider the number of documents,  
15 length of delay, any history of prior violations, the  
16 ability to pay, and such other matters as justice re-  
17 quires.

18 (6) RULE OF CONSTRUCTION.—Nothing in this  
19 subsection shall be construed to replace or supersede  
20 any criminal sanctions that may apply under title  
21 18, United States Code, or under any other title of  
22 the United States Code.

23 (j) RULE OF CONSTRUCTION.—The disclosure proc-  
24 ess in this section shall not be construed to affect the Fed-  
25 eral Rules of Civil or Criminal Procedure or any Federal

1 law which requires the disclosure of documents or which  
2 deals with attorney-client privilege, attorney work product,  
3 or trade secret protection.

4 (k) DEFINITIONS.—In this section:

5 (1) DOCUMENT.—The term “document” shall  
6 include originals and drafts of any kind of written  
7 or graphic matter, regardless of the manner of pro-  
8 duction or reproduction, of any kind of description,  
9 whether sent or received or neither, and all copies  
10 thereof that are different in any way from the origi-  
11 nal (whether by interlineation, receipt stamp, nota-  
12 tion, indication of copies sent or received or other-  
13 wise) regardless of whether confidential, privileged,  
14 or otherwise, including any paper, book, account,  
15 photograph, blueprint, drawing, agreement, contract,  
16 memorandum, advertising material, letter, telegram,  
17 object, report, record, transcript, study, note, nota-  
18 tion, working paper, intra-office communication,  
19 intra-department communication, chart, minute,  
20 index sheet, routing sheet, computer software, com-  
21 puter data, delivery ticket, flow sheet, price list,  
22 quotation, bulletin, circular, manual, summary, re-  
23 cording of telephone or other conversation or of  
24 interviews, or of conferences, or any other written,  
25 recorded, transcribed, punched, taped, filmed, or



1 graphic matter, regardless of the manner produced  
2 or reproduced. Such term shall also include any  
3 tape, recording, videotape, computerization, or other  
4 electronic recording, whether digital or analog or a  
5 combination of the two.

6 (2) MANUFACTURER.—The term “manufac-  
7 turer” includes subsidiaries, assigns, agents, and re-  
8 lated or affiliated entities that are primarily funded  
9 by persons who manufacture a tobacco product;

10 (3) PROCEEDING.—The term “proceeding” in-  
11 cludes any action undertaken pursuant to this sec-  
12 tion including the search, indexing, and production  
13 of documents.

## 14 **Subtitle B—Consent Decrees**

### 15 **SEC. 411. CONSENT DECREES.**

16 (a) REQUIREMENT.—

17 (1) IN GENERAL.—Except as provided in para-  
18 graph (2), to be eligible to receive payments under  
19 section 111, a State, and to be eligible to receive the  
20 damages protections under section 401, a tobacco  
21 manufacturer, shall enter into consent decrees under  
22 this section to be effective on the date of enactment  
23 of this Act.

24 (2) GOOD FAITH EFFORTS.—The limitation de-  
25 scribed in paragraph (1) with respect to payments

1 under section 111 shall not apply to a State if the  
2 attorney general of the State certifies to the Sec-  
3 retary that—

4 (A) the State has made good faith efforts  
5 to enter into a consent decree in accordance  
6 with this subtitle; and

7 (B) such State is willing to be bound by  
8 such decree but such decree does not exist be-  
9 cause—

10 (i) of the refusal on the part of a to-  
11 bacco manufacturer to enter into such de-  
12 cree; or

13 (ii) the appropriate court has not en-  
14 tered the decree even though the parties  
15 have lodged such a decree with the court.

16 (b) TERMS AND CONDITIONS.—

17 (1) IN GENERAL.—The terms and conditions  
18 contained in the consent decrees described in sub-  
19 section (a) shall contain provisions relating to—

20 (A) an agreement not to directly or indi-  
21 rectly pursue or support legal challenges to the  
22 implementation of any aspect of this Act (or an  
23 amendment made by this Act), including any  
24 existing or future regulatory authority under  
25 the Federal Food, Drug and Cosmetic Act, any

1 document disclosure requirements, any survey  
2 methodology used or penalties applied under  
3 title III, and any advertising and marketing re-  
4 strictions aimed at reducing youth tobacco use;

5 (B) an agreement to pass-through the  
6 costs of the assessments made under section  
7 102 to consumers through increases in the price  
8 of tobacco products;

9 (C) restrictions on tobacco product adver-  
10 tising and marketing aimed at preventing youth  
11 tobacco use and youth access to such products;

12 (D) in order to reduce youth tobacco use,  
13 restrictions on tobacco industry trade associa-  
14 tions;

15 (E) the disclosure of tobacco smoke con-  
16 stituents;

17 (F) the disclosure of nontobacco constitu-  
18 ents and ingredients found in tobacco products;

19 (G) the disclosure of existing and future  
20 documents relating to health, toxicity, and ad-  
21 diction related to tobacco product usage;

22 (H) the obligation of manufacturers to  
23 make payments for the benefit of States, pri-  
24 vate litigants and the general public;

1 (I) the obligation of manufacturers to  
2 interact only with exporters, importers, whole-  
3 salers, distributors and retailers that operate in  
4 compliance with the applicable provisions of  
5 Federal, State, or local law regarding the mar-  
6 keting and sale of tobacco products;

7 (J) requirements for warnings, labeling,  
8 and packaging of tobacco products; and

9 (K) any other matter determined appro-  
10 priate by the Secretary or the parties involved.

11 (2) LIMITATIONS.—The terms and conditions  
12 contained in the consent decrees described in sub-  
13 section (a) shall not contain provisions relating to—

14 (A) tobacco product design, performance,  
15 or modification;

16 (B) manufacturing standards and good  
17 manufacturing practices; and

18 (C) testing and regulation with respect to  
19 toxicity and ingredients approval.

20 (3) ENFORCEABILITY.—The terms and condi-  
21 tions contained in the consent decrees described in  
22 subsection (a) shall be enforceable by the signato-  
23 ries, as well as the Attorney General, and shall in-  
24 clude a provision that prohibits signatories from  
25 challenging the enforceability of the consent decrees.

1           (4) CONSTRUCTION.—The terms and conditions  
2           contained in the consent decrees described in sub-  
3           section (a) shall provide that the terms of the decree  
4           will be construed in a manner that is consistent with  
5           the provision of this Act.

6           (c) APPROVAL.—

7           (1) IN GENERAL.—Prior to the entry of a con-  
8           sent decree by a court under this section the court  
9           must find that the provisions of the consent de-  
10          cree—

11                   (A) have been approved by the Secretary  
12                   and the Attorney General;

13                   (B) are fair and reasonable; and

14                   (C) are in the public interest.

15          (2) DETERMINATION BY SECRETARY.—To ap-  
16          prove a consent decree under paragraph (1)(A), the  
17          Secretary and the Attorney General shall have deter-  
18          mined whether the provisions of the decree are con-  
19          sistent with this Act and the Food, Drug and Cos-  
20          metic Act or the rules and regulations promulgated  
21          under such Acts.

22          (3) NOTICE TO PUBLIC.—With respect to the  
23          approval of a consent decree under this section, the  
24          court shall ensure that the public has been given not  
25          less than 60 days notice of the filing of the decree

1 by the parties and any objections thereto must be  
2 addressed to the satisfaction of the court.

3 (d) ENFORCEMENT.—The provisions of a consent de-  
4 cree entered under this section shall remain in effect and  
5 enforceable in the court in which the decree is entered.

6 (e) NONAPPLICATION OF PROVISIONS.—If any of the  
7 provisions of a consent decree entered into under this sec-  
8 tion by a tobacco manufacturer are held to be unconstitu-  
9 tional or otherwise held not to apply to such manufacturer,  
10 the liability protection contained in section 401 shall cease  
11 to apply to such manufacturer.

12 **TITLE V—TOBACCO FARM FAM-**  
13 **ILY AND COMMUNITY ASSIST-**  
14 **ANCE TRUST FUND**

15 **SEC. 501. TOBACCO FARM FAMILY AND COMMUNITY AS-**  
16 **SISTANCE TRUST FUND.**

17 (a) ESTABLISHMENT.—There is established within  
18 the National Tobacco Trust Fund a fund to be known as  
19 the “Trust Fund for Tobacco Farming Families and Com-  
20 munities” (referred to in this section as the “Fund”), con-  
21 sisting of such amounts as may be appropriated or cred-  
22 ited to the Trust Fund.

23 (b) TRANSFERS TO TRUST FUND.—There are au-  
24 thorized to be appropriated to the Fund for each fiscal  
25 year amounts made available to the Trust Fund as pro-

1 vided for in section 101(d)(2)(D) and any amounts pro-  
2 vided under section 102(a)(1) that are not appropriated  
3 in fiscal year 1999.

4 (c) REPAYABLE ADVANCES.—

5 (1) AUTHORIZATION.—There are authorized to  
6 be appropriated to the Fund, as repayable advances,  
7 such sums as may from time to time be necessary  
8 to make expenditures under subsection (d).

9 (2) REPAYMENT WITH INTEREST.—Repayable  
10 advances made to the Fund shall be repaid, and in-  
11 terest on the advances shall be paid, to the general  
12 fund of the Treasury when the Secretary of the  
13 Treasury determines that moneys are available in  
14 the Fund to make the payments.

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

24 (d) EXPENDITURES FROM FUND.—

1           (1) IN GENERAL.—Subject to paragraph (2),  
2           amounts in the Fund shall be available for making  
3           expenditures to assist tobacco-dependent farm fami-  
4           lies, workers and communities, including—

5                   (A) compensation and economic and tran-  
6                   sitional assistance to tobacco farming families;

7                   (B) economic and transitional assistance,  
8                   including employment-related compensation and  
9                   services, to workers and businesses (not includ-  
10                  ing manufacturers of tobacco products) in to-  
11                  bacco-related industries; and

12                  (C) economic development and related  
13                  transitional assistance for communities whose  
14                  economies depend significantly upon the pro-  
15                  duction, handling, marketing and processing of  
16                  tobacco.

17           (2) IMPLEMENTATION.—Amounts in the Fund  
18           shall be available for making expenditures described  
19           in paragraph (1) only if a law is enacted not later  
20           than January 1, 2000, that specifically prescribes  
21           authorized uses of the Fund.

22           (e) BUDGETARY TREATMENT.—This section con-  
23           stitutes budget authority in advance of appropriations  
24           Acts.



1 (f) TERMINATION OF EFFECTIVENESS.—The author-  
 2 ity provided by this section terminates effective January  
 3 1, 2000, unless a law is enacted not later than January  
 4 1, 2000, that specifically prescribes authorized uses of the  
 5 Fund.

6 **TITLE VI—REDUCING EXPOSURE**  
 7 **TO ENVIRONMENTAL TO-**  
 8 **BACCO SMOKE**

9 **SEC. 601. EDUCATION AND OUTREACH.**

10 From amounts made available for each fiscal year  
 11 under section 101(d)(2)(D), \$100,000,000 shall be pro-  
 12 vided to enable States to conduct education and outreach  
 13 activities relating to the health-related effects of environ-  
 14 mental tobacco smoke.

15 **SEC. 602. INVOLUNTARY EXPOSURE TO ENVIRONMENTAL**  
 16 **TOBACCO SMOKE.**

17 From amounts made available for each fiscal year  
 18 under section 101(d)(2)(D), \$100,000,000 shall be pro-  
 19 vided to enable States to establish programs to reduce in-  
 20 voluntary exposure to environmental tobacco smoke.

21 **SEC. 603. COVERAGE OF CONGRESSIONAL BUILDINGS.**

22 The provisions of Executive Order 13058 (62 FR  
 23 43451; August 13, 1997) shall apply to any public facility  
 24 at which a covered employee (as such term is defined in  
 25 section 101(3) of the Congressional Accountability Act of

1 1995 (2 U.S.C. 1301(3)) performs work. With respect to  
2 such facilities, the enforcement provisions of such Execu-  
3 tive Order shall be carried out by the Office of Compli-  
4 ance.

## 5 **TITLE VII—MISCELLANEOUS** 6 **PROVISIONS**

### 7 **SEC. 701. WHISTLEBLOWER PROTECTIONS.**

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

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

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

4 (1) reinstate the employee to the employee’s  
 5 former position;

6 (2) pay compensatory damages; or

7 (3) take other appropriate actions to remedy  
 8 any past discrimination.

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

11 (1) deliberately causes or participates in the al-  
 12 leged violation of law or regulation; or

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

18 **SEC. 702. PROHIBITION ON USE OF FUNDS TO FACILITATE**  
 19 **THE EXPORTATION OR PROMOTION OF TO-**  
 20 **BACCO.**

21 (a) LIMITATIONS.—

22 (1) IN GENERAL.—Notwithstanding any other  
 23 provision of law, no funds made available by appro-  
 24 priations or otherwise made available may be used

1 by any officer, employee, department, or agency of  
2 the United States—

3 (A) to challenge tobacco-related laws or  
4 regulations in any country if such laws or regu-  
5 lations—

6 (i) are based on sound public health  
7 principles;

8 (ii) are applied in a nondiscriminatory  
9 manner to both imported and domestic to-  
10 bacco and tobacco products; and

11 (iii) if sufficient notice (not to exceed  
12 6 months) of the application of such laws  
13 or regulations has been made public;

14 (B) promote the sale or exportation of to-  
15 bacco or tobacco products or to assist the ef-  
16 forts of a domestic individual or entity in any  
17 such promotion; or

18 (C) to attend or otherwise support recep-  
19 tions that feature tobacco products brand  
20 names, trade promotions, or any events that are  
21 sponsored by individuals or entities involved in  
22 the export, manufacture, promotion, distribu-  
23 tion or sale of tobacco or tobacco products.

1           (2) REQUIREMENTS.—With respect to tobacco  
2           or tobacco products, United States Diplomatic Posts  
3           shall—

4                   (A) assist and promote tobacco-control ef-  
5                   forts in foreign countries; and

6                   (B) with respect to laws or regulations de-  
7                   scribed in paragraph (1)(A), refer such laws or  
8                   regulations to the appropriate trade agencies of  
9                   the United States if it is suspected that such  
10                  laws or regulations do not comply with any of  
11                  the requirements of such paragraph.

12          (b) EXCEPTION.—Subsection (a)(1) shall not apply  
13          to any restriction or proposed restriction by a foreign  
14          country if—

15                  (1) the restriction is applied in a manner which  
16                  constitutes a means of arbitrary or unjustifiable dis-  
17                  crimination between countries; and

18                  (2) the United States Trade Representative, in  
19                  conjunction with the Secretary of Health and  
20                  Human Services, determines that—

21                          (A) the restriction is being applied in a  
22                          manner that constitutes a means of arbitrary or  
23                          unjustifiable discrimination between countries;  
24                          and

1 (B) that the restriction is not a reasonable  
2 means of protecting the public health.

3 (c) REPORTS.—The United States Trade Representa-  
4 tive shall include a description of all exceptions made pur-  
5 suant to subsection (b) in reports submitted to Congress  
6 as required under Federal law prior to the date of enact-  
7 ment of this Act.

8 (d) DEFINITION.—In this section, the term “arbi-  
9 trary or unjustifiable discrimination” means a restriction  
10 or proposed restriction by a foreign country that—

11 (1) is arbitrary or unjustifiable; and

12 (2) does not adhere to the principle of national  
13 treatment and applies less favorable treatment to  
14 goods that are imported into that country than the  
15 country applies to like goods that are the product,  
16 growth, or manufacture of that country.

17 **SEC. 703. PROVISIONS RELATING TO NATIVE AMERICANS.**

18 (a) IN GENERAL.—The provisions of this Act (or an  
19 amendment made by this Act) shall apply to the manufac-  
20 ture, distribution, and sale of tobacco products in any area  
21 within the jurisdiction of an Indian tribe or tribal organi-  
22 zation.

23 (b) RELIGIOUS PRACTICE EXCEPTION.—In recogni-  
24 tion of the religious, traditional and ceremonial uses of  
25 tobacco and tobacco products by many Indian tribes and

1 the members of such tribes, nothing in this Act (or an  
2 amendment made by this Act) shall be construed to in-  
3 fringe upon the rights of such tribes or members to trans-  
4 fer, acquire, possess, or use any tobacco or tobacco prod-  
5 ucts for such purposes. The preceding sentence shall only  
6 be construed to apply to those quantities of tobacco prod-  
7 ucts necessary to fulfill recognized religious, traditional or  
8 ceremonial purposes and not to permit the general market-  
9 ing of tobacco products not in compliance with subchapter  
10 F of chapter V of the Federal Food, Drug and Cosmetic  
11 Act.

12 (c) PAYMENTS TO TRUST FUND.—Any Indian tribe  
13 or tribal organization that engages in the manufacture of  
14 tobacco products shall be subject to liability for an assess-  
15 ment under section 102.

16 (d) APPLICATION OF FEDERAL FOOD, DRUG AND  
17 COSMETIC ACT REQUIREMENTS.—

18 (1) IN GENERAL.—The Secretary, in consulta-  
19 tion with the Secretary of the Interior, shall promul-  
20 gate regulations to provide for the application of any  
21 requirements of the Food, Drug and Cosmetic Act  
22 with respect to tobacco products manufactured, dis-  
23 tributed, or sold in any area within the jurisdiction  
24 of an Indian tribe or tribal organization as appro-  
25 priate to comply with subsections (a) and (b).

1           (2) ELIGIBILITY FOR ASSISTANCE.—Under the  
2 regulations promulgated under paragraph (1), the  
3 Secretary, after consultation with the Secretary of  
4 the Interior, may provide assistance to an Indian  
5 tribe or tribal organization in meeting and enforcing  
6 the requirements under such regulations if—

7           (A) the tribe or organization has a govern-  
8 ing body that has powers and carries out duties  
9 that are similar to the powers and duties of  
10 State or local governments and requests such  
11 assistance by application to the Secretary;

12           (B) the functions to be exercised through  
13 the use of such assistance relate to activities  
14 within the exterior boundaries of the reservation  
15 or other areas within the jurisdiction of the  
16 tribe involved; and

17           (C) the tribe or organization is reasonably  
18 expected to be capable of carrying out the func-  
19 tions required by the Secretary.

20           (3) DETERMINATIONS.—The Secretary, in con-  
21 sultation with the Secretary of the Interior, shall  
22 make determinations concerning the eligibility of an  
23 Indian tribe or tribal organization for assistance  
24 under regulations under paragraph (1) not later  
25 than 90 days after the date on which such tribe or



1 organization submits an application for such assist-  
2 ance.

3 (4) IMPLEMENTATION BY SECRETARY.—If the  
4 Secretary determines that the Indian tribe or tribal  
5 organization is not willing or qualified to administer  
6 the requirements of the regulations promulgated  
7 under this subsection, the Secretary, in consultation  
8 with the Secretary of the Interior, shall implement  
9 and enforce such regulations on behalf of the tribe  
10 or organization.

11 (e) RETAIL LICENSING REQUIREMENTS.—

12 (1) IN GENERAL.—The requirements of sub-  
13 chapter F of chapter V of the Federal Food, Drug  
14 and Cosmetic Act (as added by section 221 of this  
15 Act) relating to minors' access to tobacco products  
16 shall apply to retailers that sell tobacco products in  
17 any area within the jurisdiction of an Indian tribe  
18 or tribal organization.

19 (2) SELF-REGULATION.—In order to be eligible  
20 for funds under subsection (f), an Indian tribe or  
21 tribal organization shall implement a tribal licensing  
22 program within the exterior boundaries of the res-  
23 ervation and other areas within the jurisdiction of  
24 the tribe consistent with the regulations promulgated  
25 under such subchapter F of chapter V of the Fed-

1       eral Food, Drug and Cosmetic Act relating to mi-  
2       nors' access to tobacco products.

3           (3) IMPLEMENTATION BY SECRETARY.—If the  
4       Secretary, in consultation with the Secretary of the  
5       Interior, determines that the Indian tribe or tribal  
6       organization is not qualified to administer the re-  
7       quirements of subchapter F of chapter V of the Fed-  
8       eral Food, Drug and Cosmetic Act relating to mi-  
9       nors' access to tobacco products, the Secretary, in  
10      consultation with the Secretary of the Interior, shall  
11      implement such requirements on behalf of the tribe  
12      or organization.

13      (f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

14           (1) IN GENERAL.—For each fiscal year the Sec-  
15      retary shall pay to each Indian tribe that has an ap-  
16      proved tribal anti-smoking plan a tribal grant for  
17      the fiscal year in an amount equal to the amount de-  
18      termined under paragraph (3), and shall reduce the  
19      amounts payable under section 111 to any State in  
20      which the service area or areas of the Indian tribe  
21      are located by the amount so determined.

22           (2) PLAN.—To be eligible to receive a payment  
23      under paragraph (1), an Indian tribe shall prepare  
24      and submit to the Secretary for approval an anti-

1 smoking plan and shall otherwise meet the require-  
2 ments of subsection (e).

3 (3) AMOUNT DETERMINED.—The amount of  
4 any funds for which an Indian tribe is eligible under  
5 paragraph (1) shall be determined by the Secretary  
6 based on the ratio of the total number of Indians re-  
7 siding on such tribe’s reservation or in areas within  
8 the jurisdiction of the tribe in the State to the total  
9 population of the State multiplied by the amount al-  
10 located to State under section 111.

11 (4) USE.—Amounts provided to a tribe or orga-  
12 nization under this paragraph shall be used to reim-  
13 burse the tribe for smoking-related health expendi-  
14 tures, to further the purposes of this Act, and in ac-  
15 cordance with a plan submitted by the tribe or orga-  
16 nization and approved by the Secretary as being in  
17 compliance with this Act. Tribes and tribal organiza-  
18 tions shall have the flexibility to utilize such  
19 amounts to meet the unique health needs of such  
20 tribes within the context of tribal health programs if  
21 such programs meet the fundamental Federal re-  
22 quirements under this Act as determined by the Sec-  
23 retary.

24 (5) REALLOTMENT.—Any amounts set-aside  
25 and not expended under this paragraph shall be re-

1       allotted among other eligible tribes and organiza-  
2       tions.

3       (g) OBLIGATION OF MANUFACTURERS.—A partici-  
4       pating manufacturer shall not engage in any activity in  
5       an area within the jurisdiction of an Indian tribe or tribal  
6       organization that is prohibited under this Act.

7       (h) INDIAN HEALTH SERVICE.—Amounts made  
8       available under section 101(d)(2)(D) shall be provided to  
9       the Indian Health Service to be used for anti-tobacco-re-  
10      lated consumption and cessation activities including—

11           (1) clinic and facility design, construction, re-  
12      pair, renovation, maintenance and improvement;

13           (2) provider services and equipment;

14           (3) domestic and community sanitation associ-  
15      ated with clinic and facility construction and im-  
16      provement;

17           (4) inpatient and outpatient services; and

18           (5) other programs and services provided  
19      through the Indian Health Service or through tribal  
20      contracts, compacts, grants or cooperative agree-  
21      ments with the Indian Health Service and which are  
22      deemed appropriate to raising the health status of  
23      Indians.

24      (i) PREEMPTION.—

1           (1) GENERAL PREEMPTION.—Except as other-  
2       wise provided for in this section, nothing in this Act  
3       shall be construed as prohibiting an Indian tribe or  
4       tribal organization from imposing requirements, pro-  
5       hibitions, penalties or other measures to further the  
6       purposes of this Act that are in addition to the re-  
7       quirements, prohibitions, or penalties required under  
8       this Act.

9           (2) PUBLIC EXPOSURE TO SMOKE.—Nothing in  
10      the amendment made by title V shall be construed  
11      to preempt or otherwise affect any Indian tribe or  
12      tribal organization rule or practice that provides  
13      greater protection from the health hazards of envi-  
14      ronmental tobacco smoke.

15          (3) NATIVE AMERICANS.—A State may not im-  
16      pose obligations or requirements relating to the ap-  
17      plication of this Act to Indian tribes and tribal orga-  
18      nizations.

19   **SEC. 704. PRESERVATION OF STATE AND LOCAL AUTHOR-**  
20                           **ITY.**

21      Except as otherwise provided for in this Act (or an  
22      amendment made by this Act), nothing in this Act shall  
23      be construed as prohibiting a State from imposing require-  
24      ments, prohibitions, penalties or other measures to further  
25      the purposes of this Act that are in addition to the re-

1 quirements, prohibitions, or penalties required under this  
2 Act. To the extent not inconsistent with the purposes of  
3 this Act, State and local governments may impose addi-  
4 tional tobacco product control measures to further restrict  
5 or limit the use of such products by minors, except that  
6 such State and local governments may not impose any la-  
7 beling requirements in addition to those required under  
8 Federal law.