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Tobacco-Settlement: New Legislation-Conrad Bill [1]

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# KIDS DESERVE FREEDOM FROM TOBACCO ACT OF 1998

## "The KIDS Act"

**Principles**

Congress has an historic opportunity to enact legislation this year which will significantly reduce tobacco use — especially among children. Nearly one in five deaths in America today is attributable to tobacco use, making it the single most preventable cause of premature death, disease and disability facing this country. These facts compel us to act now. However, to ensure the most effective result, legislation must embody the following principles:

-- It must be bipartisan and comprehensive — not piecemeal — to ensure a fundamental and lasting change in the way tobacco products are marketed and sold in this country.

-- It must attack the youth smoking epidemic as rapidly as possible by forcing the price of cigarettes to increase by $1.50 per pack within the first two years, and providing for comparable increases in other tobacco products.

-- It must preserve the rights of individuals and groups to sue tobacco manufacturers for the damages they have caused, while at the same time establishing a framework to ensure that funds are available to cover awards and settlements secured by successful claimants.

-- It must provide incentives to states, local communities, schools, research institutions, health professionals and other stakeholders to develop innovative strategies to discourage youth smoking, and to assist adult smokers in kicking the habit.

-- It must have as its primary purpose the promotion of aggressive anti-tobacco initiatives and public health improvements, including the provision of significant new resources for medical research.

**Summary**

The KIDS DESERVE FREEDOM FROM TOBACCO ACT OF 1998 ("The KIDS Act") significantly improves upon and strengthens the June 1997 Attorneys General Tobacco Settlement Agreement ("June 1997 Tobacco Agreement"). The legislation would substantially reduce youth tobacco use through a comprehensive set of policy changes. These include increasing the cost of tobacco products, curtailing advertising and marketing to children, assuring appropriate industry oversight, expanding the availability of smoking cessation programs, and implementing a strong public health prevention and education strategy involving the private sector, schools, states and local communities.

## I. ECONOMIC INCENTIVES

***Price Increase.*** Public health experts agree that the single most important component of a comprehensive plan to reduce youth tobacco use is to significantly increase the price of tobacco products. Studies have shown that for every 10% increase in price, smoking is decreased at least 4% among adults and, more importantly, at least 7% among children. Therefore, our proposal would **increase the price of a pack of cigarettes by $1.50 within two years** ($1.00 the first year; $0.50 the second year). The price of other tobacco products — such as cigars and smokeless/spit tobacco — would be increased by a comparable amount. These increases would be achieved through **annual industry payments totaling $20 billion the first year and $25 billion per year thereafter** (indexed to

**payments totaling $20 billion the first year and $25 billion per year thereafter** (indexed to inflation).

**Annual Youth Reduction Targets.** There is clear and abundant evidence that the tobacco industry has tailored its marketing and advertising programs to attract and encourage children to smoke. Largely because of the industry's success in this regard, 3,000 children start smoking every day in America. Accordingly, the KIDS Act would make the tobacco industry accountable for promoting and achieving a significant reduction in tobacco use among children. Our proposal would set an ambitious, but realistic schedule for **reducing the rate of youth smoking by 65 percent over the next ten years.**

The schedule would follow the recommendations of the **Final Report of the Advisory Committee on Tobacco Policy and Public Health**, chaired by Dr. C. Everett Koop and Dr. David Kessler. The following targets would be set:

| YEAR | REDUCTION | YEAR | REDUCTION |
|---|---|---|---|
| 2 | 15% | 7 | 50% |
| 3 | 20% | 8 | 55% |
| 4 | 25% | 9 | 60% |
| 5 | 30% | 10 | 65% |
| 6 | 40% | Beyond | 65% |

(youth prevalence measured by monthly use)

***Tough Look-back Penalties.*** The KIDS Act would impose up to an additional $10 billion per year in non tax-deductible penalties (indexed to inflation) on the tobacco industry for failure to meet these targets. Our penalty structure would impose stiff price increases if targets are not met, and unlike the June 1997 Tobacco Agreement or any other proposal, is structured to impose disproportionate penalties on the companies that addict the most youth smokers.

First, **industry-wide penalties** would be assessed for failure to meet the above targets. Second, **company-specific penalties** would be imposed to prevent individual manufacturers from achieving any financial reward from addicting children to their products. Finally, unlike the June 1997 Tobacco Agreement, the KIDS Act would provide no abatement or rebate relief to tobacco companies.

-- ***Industry-wide Penalties:*** Experts agree that to reduce youth consumption by one percentage point, a non tax-deductible penalty of at least $.02 per pack is necessary. Therefore, for every percentage point missed in a given year, the KIDS Act would assess an industry-wide penalty of $.02 per pack of cigarettes. For example, if the industry were to miss the target for a given year by 10 percentage points, the penalty assessed would be $.20 per pack, or approximately $4.8 billion. Furthermore, the KIDS Act would impose even tougher penalties on the tobacco industry for repeated failure to meet the targets: after two consecutive years of failure, it would double to $.04 per pack for each percentage point missed; after four, it would triple to $.06 per pack.

-- ***Company-specific Penalties:*** The KIDS Act would impose the most hard-hitting assurance yet proposed that tobacco manufacturers reap no profit from recruiting and addicting children. The company-specific penalty for failure to meet the youth reduction target for a year would be $1,500 for each teen smoker for which the individual company misses the target. As with the industry-wide penalties, the KIDS Act would impose even tougher penalties on individual tobacco companies for repeated failure to meet these targets. After two consecutive years of failure, the penalty would double to $3,000 for each teen smoker for which the individual company misses the target. The penalty structure is designed to make it several times more expensive for an individual company to addict a child to a designed to make it several times more expensive for an individual company to addict a child to a lifetime of smoking, than to never have that child start smoking its product in the first place.

*No Anti-trust Immunity.* Anti-trust laws are the most important safeguard we have against anti-competitive actions which hurt consumers and undermine the free market. As such, exceptions to these laws should be made only in rare circumstances, where important policy objectives outweigh the benefit of free market protections. The tobacco industry has not made a persuasive case for the granting the immunity it proposes. Therefore, unlike the June 1997 Tobacco Agreement, the KIDS Act would not extend any anti-trust exemptions to tobacco manufacturers.

*State Performance Bonus Payments.* The June 1997 Tobacco Agreement and pending legislative initiatives fail to provide strong economic incentives for states and communities to help decrease tobacco use among children. The KIDS Act would address this shortcoming by establishing a $500 million annual "Performance Bonus Pool" for states that meet or exceed the reduction targets within their own borders.

This would serve as an important incentive for states and localities to develop aggressive and innovative anti-smoking strategies suited to their own individual needs. State-specific baselines and targets would be developed using a standardized methodology determined by the Centers for Disease Control and Prevention. Furthermore, the KIDS Act would clarify the authority of states and local governments to encourage the enactment of stronger anti-tobacco policies.

## II. CHANGING HOW TOBACCO PRODUCTS ARE SOLD

*Marketing and Advertising Reforms.* The tobacco industry spends an estimated $5 billion per year on marketing and promotional activities — much of it targeted to children. The KIDS Act would fundamentally alter tobacco marketing and advertising practices to eliminate this reprehensible practice.

*Health Warning Labeling Reforms.* Evidence suggests that the current warning label regime for tobacco product packaging fails to adequately convey to children the risks associated with tobacco use. For example, nearly half of the 8th graders in a 1993 study denied any "great risk" associated with pack-a-day smoking, despite the presence of health warnings on tobacco product packaging. Moreover, consumer research indicates that alterations in format, composition and warning label content would make them far more effective in reaching children. Thus, the KIDS Act proposes to significantly strengthen warning labels to improve their impact on the behavior of children. These messages would be regularly reviewed and updated by the Secretary of Health and Human Services to reflect changes in public awareness and attitudes about tobacco use.

*Minors' Access Reforms.* Illegal sales to minors and shoplifting are the primary means by which children obtain cigarettes and smokeless tobacco products. Estimates suggest that at least 516 million packs of cigarettes per year are consumed by minors, of which at least half are obtained through direct, illegal sales to minors. Shoplifting is another serious concern. In Iowa alone, more than 4 million packs of cigarettes are shoplifted every year.

The KIDS Act would address these problems by mandating that tobacco products be sold from behind store counters, banning vending machine sales, requiring retailers to verify age, and fining those vendors caught selling to minors. In addition, the KIDS Act would require states to license tobacco retailers and distributors to further ensure compliance with minors' access provisions. These reforms would build upon those developed by the U.S. Food and Drug Administration (FDA), and those contained in the June 1997 Tobacco Agreement.

Importantly, the tobacco companies would be bound by enforceable consent decrees to preclude them from challenging such restrictions in the courts, or from providing any means of support to third parties for this purpose.

***State Preemption.*** The KIDS Act would clarify the authority of states and local governments to regulate the sale and use of tobacco products by repealing the preemption clause in existing federal law. However, it would preserve the national requirement for uniform packaging and labeling standards to ensure the free flow of interstate commerce.

**At-A-Glance: Changing How Tobacco Products are Sold**

| Advertising | Marketing | Labeling | Minors' Access |
|---|---|---|---|
| B&W text only (except in adult-only facilities and publications) | No "trinkets & trash" (caps, jackets, bags, etc.) or proof-of- purchase clubs | Improved and updated warnings | No distribution or sales to minors under age 18 |
| No human images or cartoon characters | No sponsorship of sporting events or other forms of entertainment | Increased Size | Photo id required up to age 27 |
| No outdoor advertising | No paid product placement in movies, TV shows, on Internet or video games | Rotating Messages | Face-to-face sales required |
| No advertising on the Internet | No free samples | Statements of intended use | No single cigarettes sales |
| No self-service displays | | Reularly reviewed and updated by HHS | No vending machines sales |
| | | | No self-service sales, except in adult-only establishments |

## III. OVERSIGHT AND ENFORCEMENT

***FDA Authority.*** Given the addictive, disease-causing nature of tobacco products, full and appropriate regulation is needed. Therefore, in addition to establishing new advertising and marketing restrictions, the KIDS Act would assure that FDA has the authority to effectively monitor and regulate the manufacture and distribution of tobacco products, promote the development of safer alternatives, and to conduct research. For these purposes, the KIDS Act would allocate $300 million over and above those provided in the annual appropriations process. Importantly, FDA would not be required to overcome provided in the annual appropriations process. Importantly, FDA would not be required to overcome special burdens or procedural hurdles in its regulatory activities — a major flaw of the June 1997 Tobacco Agreement. The KIDS Act would classify "nicotine" as a drug, and "tobacco products" as drug delivery devices (to include cigars, pipes and loose tobacco). In addition, our legislation would authorize FDA to implement a "public health" standard in its review of tobacco products.

The FDA's authority over tobacco products would be no more and no less than its authority over other drugs and devices. However, because of the addictive nature of tobacco products, and the high prevalence of their use, the KIDS Act would specifically prohibit the FDA from banning the sale of tobacco products to adults. Finally, the KIDS Act would ensure that FDA has appropriate access to tobacco industry documents to carry out its responsibilities.

***Ingredient Disclosure.*** Evidence strongly suggests that tobacco companies design and manufacture their products to satisfy and enhance nicotine dependence. Therefore, increased information about the role and function of tobacco additives is essential to the effective regulation of such products. The KIDS Act would substantially strengthen current ingredient disclosure requirements for tobacco manufacturers. For example, each company would be required, by brand and content, to submit lists of all tobacco additives. Further, if the Secretary of Health and Human Services determines that any of these additives pose a particular risk to smokers or others exposed to tobacco smoke, this information will be fully and promptly disclosed to the public.

***Reduced Risk.*** Much remains unknown about the feasibility and effectiveness of developing a less hazardous tobacco product. However, it is clear that tobacco manufacturers have the ability and knowledge to modify their products. Indeed, various forms of "reduced risk" nicotine delivery devices already have been introduced into the market. The KIDS Act would provide increased monitoring of new technologies and facilitate broad market availability of all innovations which effectively reduce the risk of tobacco use.

***Licensing.*** There are approximately one million tobacco outlets in the United States, and as recently as 1994, nearly three quarters sold tobacco products to minors. These include supermarkets, newsstands, hotels, gas stations, convenience stores, and other types of vendors. In light of the number and variety of such outlets, a tobacco retailer licensing program is critical to ending the illegal sale of tobacco products to minors. The KIDS Act would establish a state licensing program for retailers and distributors of tobacco products similar to the system now in place for alcoholic beverages. Additionally, tobacco manufacturers would be required to obtain federal licenses. These licenses could be revoked for noncompliance with state or federal law.

## IV. STOPPING CHILDREN FROM SMOKING BEFORE THEY START

***Prevention in Communities and Schools.*** In addition to economic incentives, changes in tobacco product advertising and marketing, and improved oversight and enforcement, experts agree that a comprehensive slate of public health activities is needed to stop children from taking up this deadly habit. For example, research-tested school programs have proven to consistently and significantly reduce adolescent smoking. Therefore, the KIDS Act would provide $1.4 billion to states for community and school-based prevention activities. These initiatives would be designed and implemented at the local level to ensure their effectiveness.

Because minority and low-income populations suffer a disproportionate burden of tobacco-related disease, and are among the greatest users of tobacco products, the KIDS Act would allocate a portion of the funding for community-based prevention activities to address their special needs. Funding also would be provided to assist Native American populations in their efforts to prevent and reduce youth smoking.

smoking.

***Counter Advertising.*** Research findings show that well-designed counter advertising initiatives do help to reduce teen smoking. Thus, an intensive, sustained media campaign at the state and federal level is needed to "deglamorize" tobacco use among young people. Accordingly, the KIDS Act would provide $750 million annually to fund a nationwide campaign with national, state, and local components. Preeminent advertising firms with proven expertise in the formulation of messages aimed at children would be charged with the development and implementation of "deglamorization" campaigns.

## V. HELPING CURRENT SMOKERS KICK THE HABIT

***Smoking Cessation.*** While the primary emphasis of our proposal is to reduce tobacco use among children, the more than 48 million adult Americans who currently smoke deserve and need help in kicking the habit. The KIDS Act would establish a coordinated federal and state-based initiative to increase access to, and awareness of, effective programs. When fully implemented, the legislation would provide $1.5 billion annually for programs designed to enhance existing employer-based initiatives, and those which target uninsured and under-served populations.

## VI. EXPANDING RESEARCH

***National Fund for Health Research.*** Tobacco products kill more than 400,000 Americans every year — more deaths than from AIDS, alcohol and drug abuse, car accidents, murders, suicides, and fires combined. To stop this epidemic, we must strengthen our national commitment to finding preventive measures and cures for diseases — especially those related to tobacco use, including cancer, heart disease, emphysema and stroke. Therefore, the KIDS Act would establish a National Fund for Health Research to allocate resources over and above those provided to the National Institutes of Health (NIH) in the annual appropriations process. The KIDS Act would allot $3.225 billion per year to the Fund.

***Prevention and Cessation Research.*** While we know a great deal about reducing tobacco use, much remains unknown. Therefore, a significant expansion of prevention and cessation research is critical to the success of any comprehensive effort to reduce tobacco use. In particular, more information is needed on why people use tobacco and on what program interventions are most effective. Efforts must also be undertaken to increase our understanding of the health effects of tobacco use and exposure to second-hand smoke. The KIDS Act would provide $625 million per year for a major new research effort.

## VII. HELPING THE VICTIMS OF TOBACCO-RELATED DISEASES

The KIDS Act would fully preserve the rights of individuals and groups to utilize the civil justice system to recover tobacco-related damages. Unlike the June 1997 Tobacco Agreement and some of the legislation currently pending in Congress, **the KIDS Act would not ban class action lawsuits or punitive damage awards, as the tobacco industry has sought.**

**Simply put, it would provide no immunity to the tobacco industry. Given the industry's behavior, such liability protections cannot be justified or condoned. Furthermore, our legislation would provide no protections from, or limitations on criminal prosecution of the tobacco industry.**

***National Victims' Compensation Fund.*** To ensure that resources are readily available for the victims of tobacco-related diseases, the KIDS Act would provide for the establishment of a pre-funded National Victims' Compensation Fund (the "Fund"), from which court awards and settlements would be paid. Furthermore, given the uncertainty of the legal environment surrounding tobacco litigation, an additional

Contingency Reserve Account would be established within the Fund. The Fund and the annual cap would be indexed to medical inflation.

· *Annual Base Payment:* At the beginning of each year, the tobacco industry would make a Base Payment of $4 billion into the Fund; awards and settlements would be paid from this base amount. At the end of every year, any unobligated funds from the Base Payment would be deposited into an interest-bearing Contingency Reserve Account.

· *Out-of-Pocket Supplement and Annual Cap:* If awards and settlements exceed the Base Payment during any year, the industry would be liable for an additional $4 billion in out-of-pocket payments to cover the excess, for a total potential annual liability payment by the tobacco industry of $8 billion. This cap would not include payments made to states in settlement of existing Attorneys General suits, and would apply only to civil claims against past wrongdoing by the industry.

· *Contingency Reserve Account:* As a further protection for claimants, the KIDS Act would establish a Contingency Reserve Account (the "Account") within the Victims' Compensation Fund. Any unobligated funds from the $4 billion Base Payment would be placed in the Account. For example, if awards and settlements paid in the first year amounted to $1 billion, the remaining $3 billion would be deposited into the Account. Funds in the Account would build up substantially in the early years as settlements and awards during this period are expected to be relatively small. For any year in which liability awards and settlements exceed $8 billion, the Account would be drawn down to make the excess payments. In the unlikely event that awards and settlements ever deplete the Account in any year, unpaid claims would be rolled over and paid from the Base Payment at the beginning of the following year.

If the Account accumulates a balance of $20 billion, the Attorney General, in conjunction with the Secretary of Health and Human Services, would determine whether to continue to deposit excess funds therein, or to redirect those funds to anti-smoking and other public health activities authorized under the legislation.

· *Small Claimant Protection:* Under the KIDS Act, individuals and smaller classes of individuals would be given priority in disbursements from the Fund to ensure that large awards or settlements, paid to 3rd parties for example, would not deny smaller claimants timely payment of their claims.

· *Settlement of State Suits and Castano Class Action:* Forty state Attorneys Generals have brought suits against the tobacco industry to recover costs incurred for tobacco-related illnesses and other damages. The KIDS Act would provide states the opportunity to settle their suits in exchange for funding from the National Tobacco Trust Fund established under this Act. In addition, the Castano Class Action lawsuits would be settled in return for the establishment of smoking cessation programs.

## VIII. ENDING TOBACCO INDUSTRY SECRECY

For decades, to the severe detriment of the public health, the tobacco industry has concealed evidence of the consequences of tobacco use and deliberately misled the public. Moreover, tobacco manufacturers have broadly misused the doctrine of attorney-client privilege to cloak industry documents and research in a veil of secrecy. The KIDS Act would require tobacco companies and their agents — as a precondition of eligibility for the annual cap on awards and settlements — to waive attorney-client privilege for key documents relating to the health effects, safety, and marketing of their products to children. This reform would assist the victims of tobacco-related diseases in securing judgments against tobacco companies, and out-of-court settlements, without the traditional barriers and costs associated with document discovery.

As a further step to assure full disclosure of appropriate documents, the annual liability cap would not apply to any awards or settlements stemming from a case in which it is found that documents were not disclosed, as required under this Act, by the industry or a specific manufacturer.

***FDA to Obtain Needed Documents.*** Tobacco companies would be required to turn over to the FDA all documents the agency deemed necessary to carry out its regulatory responsibilities — including assessing the health effects of nicotine and other tobacco ingredients, the design and development of "less hazardous" or "safer" tobacco products, as well as the advertising, marketing and promotion of such products.

***Document Depository.*** The establishment and administration of a document depository would be competitively awarded to a nongovernmental entity with no connections to the tobacco industry. Tobacco manufacturers and their agents would be required to submit all documents discovered through any litigation to this depository, along with an index in such form that would make the documents easily accessible and usable by plaintiffs and researchers.

## IX. TRANSITION ASSISTANCE TO FARMERS

Changes in national policy regarding tobacco products, and the expected decline in their consumption, will have ramifications for farming families, workers and communities in tobacco growing regions. The KIDS Act would provide $15 billion for compensation, income support and transitional assistance to tobacco farming families, and for economic development and related assistance in tobacco-dependent communities.

## X. ASSURING CLEAN INDOOR AIR

Our knowledge is growing daily on the deleterious effects of exposure to Environmental Tobacco Smoke (ETS) in the home, the workplace and other public facilities. Annually, 3,000 Americans die of lung cancer caused by second-hand smoke, and 15,000 children under 18 months of age are hospitalized with respiratory infections related to ETS exposure.

Thus, the KIDS Act would provide strong protections for workers and the public against exposures to ETS. In addition, our bill would place significant emphasis on reducing ETS exposure in the home -- including such measures as pediatric outreach, public service announcements, and comprehensive media campaigns.

The KIDS Act would also require Congress to comply with the "no smoking" policies already in place throughout the Executive Branch. Furthermore, legislation would not preempt states and local governments from establishing even more stringent policies to protect individuals from ETS.

## XI. STOPPING SMUGGLING AND SHOWING WORLD LEADERSHIP

In some countries, significant increases in cigarette prices have resulted in large-scale smuggling operations. Contraband cigarette trafficking can occur both at national borders and between states with wide disparities in tobacco excise taxes. Since 1992, this criminal activity has increased by more than 500% in the United States. As the price of cigarettes increases as a result of tobacco settlement legislation, actions must be taken to prevent the wide availability of contraband cigarettes.

***Tough Anti-Smuggling Initiative.*** In addition to licensing all tobacco product sellers in the stream of commerce, the KIDS Act would allocate $300 million per year to implement an aggressive, well-coordinated anti-smuggling program aimed at stopping contraband tobacco products from entering or being sold in the United States. The bill would facilitate substantial coordination of international, federal and state law enforcement activities, as well as providing new resources to expedite the deployment of innovative anti-smuggling technologies.

***Harsh New Penalties to Stop Smuggling.*** To further deter contraband trafficking in tobacco products, the KIDS Act would also establish harsh new criminal and monetary penalties for individuals convicted of such offenses.

***World Leadership.*** The World Health Organization (WHO) currently estimates that tobacco use causes three million deaths per year worldwide — a number which is expected to increase exponentially as the U.S.-based tobacco industry intensifies its global marketing and promotional activities. By the year 2023, WHO projects tobacco-related mortalities will jump to ten million, with nearly 70 percent occurring in developing countries. This troubling trend is expected to accelerate with the enactment of strong anti-tobacco policies in the United States.

Unlike the June 1997 Tobacco Agreement, our bill would provide clear leadership on international efforts to curb tobacco use. The KIDS Act would terminate all support for tobacco promotion overseas by the United States Government, provide $100 million per year to fund global education efforts, and encourage America's participation with other nations in efforts to harmonize tobacco policies worldwide.

## XII. INDUSTRY CONSENT DECREES

Voluntary, but legally-binding consent decrees — signed by federal and state governments and tobacco manufacturers — are critical to the success of any comprehensive tobacco legislation aimed at significantly reducing tobacco use by children. Without these decrees, key provisions of such a law could be delayed by lengthy legal challenges. To help avoid this problem, the KIDS Act would require tobacco companies to sign legally-binding consent decrees in order to receive the benefits of the annual liability cap established under the legislation. Violation of any of the terms of the consent decrees would result in exclusion of that company from the annual liability cap. Among other things, the consent decrees — which would be enforceable by the U.S. Attorney General or State Attorneys General through federal and state courts — would commit the companies to abide by the following agreements:

-- Not to directly or indirectly bring or support legal challenges to the implementation of any aspect of the KIDS Act, including existing or future FDA regulatory authority, document disclosure, youth look-back survey methodology and penalties, and advertising and marketing restrictions;

-- To pay and fully pass through the cost of annual industry payments and industry-wide look-back penalties, assuring that the price of cigarettes would increase by at least $1.50 per pack over 2 years, with comparable increases for other tobacco products;

-- All reforms related to the labeling, sale, advertising and promotion of tobacco products intended by this Act;

-- Not to directly, or through contractors, lobby federal, state or local governments against any provision of this Act;

-- To only do business with those retailers and distributors in full compliance with all provisions of this Act;

-- To dissolve the Tobacco Institute and other existing trade associations;

-- Not to advertise over the Internet; and,

-- To comply also with all of the marketing and advertising restrictions in both the FDA regulation and the proposed June 1997 Tobacco Agreement.

## XIII. ANNUAL TOBACCO PAYMENTS AND SPENDING

*Industry Payments:* The KIDS Act would require a non-deductible industry payment of $10 billion immediately upon enactment. That payment would be used by states and local communities, as well as the federal government, to begin implementation of the strong anti-tobacco measures authorized under the Act.

One year after enactment, the tobacco industry would make a payment of $20 billion to the National Tobacco Trust Fund. Each year thereafter, the industry payment would be $25 billion, indexed to inflation.

*Payments to States:* As under the June 1997 Tobacco Agreement, $193.5 billion over 25 years would be reserved for state use. Of those funds, 50% would be distributed to states to use for improving early education, child care, or other purposes at their discretion. The remaining 50% would be allocated to the states for the purposes of tobacco prevention, education, and cessation, and for the expansion of existing public health or children's health programs.

Additionally, $500 million per year would be awarded from the Performance Bonus Pool to states which meet or exceed their Annual Youth Reduction Targets.

*Payments for National Efforts:* Under the KIDS Act, $4 billion of the industry's yearly payment would be directed to the National Victims' Compensation Fund as the Annual Base Payment. Remaining industry payments would be used exclusively for national anti-tobacco and public health purposes.

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# The Healthy Kids Act

The HEALTHY Kids Act is designed to help parents keep their children from starting to use tobacco products, to greatly reduce the illegal use of tobacco products by children, and to improve the public health by reducing the overall harm caused by tobacco products.

## Protecting Children

The HEALTHY Kids Act is a comprehensive approach that contains all the elements essential to keeping our kids healthy and safe from tobacco:

- **A Healthy Price Increase.** The HEALTHY Kids Act assesses HEALTHY Kids payments of 50 cents per pack in 1999, $1.00 per pack in 2000, and $1.50 per pack in 2001. The bill assesses commensurate payments on other tobacco products and indexes payments to medical inflation after 2001. A steep price increase is the single most effective way to reduce teen smoking. Economists and public health experts have reached consensus that a price hike of at least $1.50 is needed to reach the youth smoking reduction targets.

- **Full FDA Authority.** The HEALTHY Kids Act gives the FDA full authority to protect against the health hazards of tobacco products by regulating the manufacture, distribution, promotion and advertising of tobacco products. FDA will be able to ensure the safety of tobacco ingredients, set product standards to minimize health risks, require strict and stark warning labels, and disclose ingredients.

- **Strong Look-back Penalties.** The HEALTHY Kids Act sets a goal of reducing youth smoking rates by 67% in ten years and holds manufacturers accountable if they fail to meet these targets so that they cannot undercut the other provisions of the Act. The industry as a whole is liable for penalties of 10 cents per pack, and individual companies can be fined up to 40 cents per pack. Penalties double after three consecutive years of non-compliance, triple after five years and quadruple after seven years. The industry knows better than anyone how to influence kids' views of tobacco, so it is in the best position to reduce youth smoking rates if it is given a strong incentive to do so.

- **Comprehensive Anti-tobacco Programs.** The HEALTHY Kids Act fully funds anti-tobacco research, counter-advertising, education and prevention campaigns, smoking cessation programs and other tobacco control priorities. The public health community agrees that these measures are an essential complement to the necessary price increase.

- **Retailer Compliance.** The HEALTHY Kids Act establishes a State licensure requirement and strengthens the FDA's youth access restrictions with a tough enforcement regime. Kids can't smoke cigarettes if they can't get them. And retailers have a responsibility to help parents keep tobacco products out of the hands of children if they want to maintain the privilege of selling tobacco products.

## Improving the Public Health

Although the HEALTHY Kids Act focuses on kids, it contains several important measures to reduce the overall health risks of tobacco products.

- **Second Hand Smoke.** The HEALTHY Kids Act sets a minimum Federal standard of protection against environmental tobacco smoke (ETS) by restricting smoking in the vast majority of public facilities. Recent studies confirm that ETS causes permanent health damage to non-smokers.

- **Makes Key Tobacco Industry Documents Public.** The HEALTHY Kids Act requires the tobacco industry to turn over documents on health research, nicotine manipulation, and marketing to kids.

- **International Tobacco Control Efforts.** The HEALTHY Kids Act bans the use of taxpayer money to help promote tobacco product exports, provides a small amount of money to help protect foreign children and adults from the dangers of tobacco products, requires warning labels on exports and bars overseas marketing targeted at kids.

## Helping Tobacco Farmers

The HEALTHY Kids Act fully funds a transition program to cushion the effects on farmers and their communities of reduced use of tobacco products. It compensates farmers for lost tobacco quota value, invests in rural development, helps re-train tobacco farmers and factory workers for other professions, and creates scholarships for tobacco farm families.

## Resolving Government Legal Claims

In exchange for providing money to reimburse taxpayers for tobacco-related health costs and fund public health efforts, the HEALTHY Kids Act resolves current and potential State, local and Federal legal claims against the tobacco industry for the industry's past misconduct. This reduces the industry's exposure to potentially bankrupting legal awards. The HEALTHY Kids Act does not give the industry unprecedented protection -- special safeguards that aren't available for any other industry -- against suits for future misconduct by the tobacco industry. The HEALTHY Kids Act does not provide any special legal protection to tobacco companies with respect to individuals, groups or classes of individuals, or third parties who have been injured by these companies.

## Investing in Children and Health Care, Savings for Social Security and Medicare, and Reimbursing Taxpayers

The funds generated by the HEALTHY Kids payments are directed as follows:

- **Payments to States and Investments in Children.** 38% of the revenues raised by the HEALTHY Kids Act goes to States and localities to reimburse them for tobacco-related costs. Of the State share, 57% (or 23% of the total) -- representing the Federal share of Medicaid costs -- is dedicated to child care, education and children's health.

- **Anti-Tobacco Programs.** The HEALTHY Kids Act fully funds anti-tobacco public health priorities with 17% of its revenues.

- **NIH Research.** The HEALTHY Kids Act invests 22% of Trust Fund revenues into health research.

- **Medicare.** The HEALTHY Kids Act uses 2% of its revenues to reimburse the Medicare Trust Fund for the tens of billions of dollars it has paid in tobacco-related costs.

- **Savings For Social Security.** The HEALTHY Kids Act dedicates 6% of its funds to reducing the national debt to strengthen Social Security.

- **Farmers.** The HEALTHY Kids Act uses 15% of its revenues initially to allow tobacco farmers adjust to reduced demand for tobacco. After the transition period, these funds are split between Social Security and Medicare.

# HEALTHY Kids Act Accomplishes President Clinton's Objectives

| | President Clinton's Tobacco Principles | HEALTHY Kids Act |
|---|---|---|
| 1 | Reduce Teen Smoking Including Tough Penalties | X |
| 2 | Full FDA Authority | X |
| 3 | Change Industry Culture | X |
| 4 | Meet Additional Health Goals | X |
| 5 | Protect Tobacco Farmers and Communities | X |

# Comparison of HEALTHY Kids Act & Proposed Settlement

| Issue | HEALTHY Kids | Proposed Settlement |
| --- | --- | --- |
| **Payments** | Initial payment of $10 B upon enactment (not tax deductible). Payments of 50 cents/pack in 1999, $1.00 in 2000, and $1.50 in 2001. Subsequent payments indexed to medical inflation. Annual payments do not affect income tax liability. Revenue estimate pen | Payments of about 62 cents/pack when fully phased in. Total revenue: (without adjusting for volume decline or CBO scoring offset): $368.5 B in real 1998 dollars. After adjustments, total is estimated to be about $225 billion in real 1998 dollars. |
| **Lookback** | Industry wide penalties of 10 cents/pack; company specific penalties of up to 40 cents/pack. Penalties increase for repeated non-compliance. Penalties are not tax deductible. | Industry wide penalties of up to 8 cents/pack. Rebates for companies that try to reduce teen smoking. |
| **FDA Authority** | Full Authority. | Many restrictions. |

# Comparison of HEALTHY Kids & Proposed Settlement (Cont.)

| Issue | HEALTHY Kids | Proposed Settlement |
|---|---|---|
| Youth Access/Retailers | Requires State licensing of retailers and enforces youth access restrictions. | Requires State licensing of retailers and enforces youth access restrictions. |
| Liability Protections | No special privilege for future misconduct. No special protection for industry against claims by individuals. Resolves Federal, State and local government suits for past misconduct. States may opt out. | Settles all current suits. Broad immunity against all lawsuits: no aggregation or punitives for past misconduct; no aggregation of future misconduct. |
| Attorney Fees | No payments from HEALTHY Kids funds. Arbitration panel decides payments based on ABA ethical guidelines. | No provision. |
| Documents | Turns over relevant documents to FDA. Requires FDA to make health-related documents public. | Turns over documents to document depository. Attorney client privilege protected unless three judge panel rules that it has been improperly invoked. Actions of this panel at Federal level would pre-empt State and local discovery rules. |

# Comparison of HEALTHY Kids & Proposed Settlement (Cont.)

| Issue | HEALTHY Kids | Proposed Settlement |
| --- | --- | --- |
| Farmers | Provides funding to help farmers. | No provision. |
| Environmental Tobacco Smoke | Restricts smoking in public places. Exempts bars, hotel guest rooms, tobacconists, prisons, casinos, bingo parlors, some smaller restaurants, and private clubs. | Similar. Exempts bars, hotel guest rooms, tobacconists, prisons, casinos, bingo parlors, private clubs, and restaurants other than fast food. |
| International | Bars Federal promotion of tobacco product exports and challenges to foreign countries' health measures. Funds international tobacco control efforts. Requires warning labels on exports and requires tobacco companies not to target children in for. markets | Funds international tobacco control efforts. |
| Spending Allocation | Reimburses Medicare, Medicaid, and State and local governments for tobacco-related costs. Funds anti-tobacco programs, child care, education, and farmers. Reduces the deficit. For details, see attached table. | Gives 52% to States. Remainder funds anti-tobacco and trust fund for victims. (Note: allocation is very unclear.) |

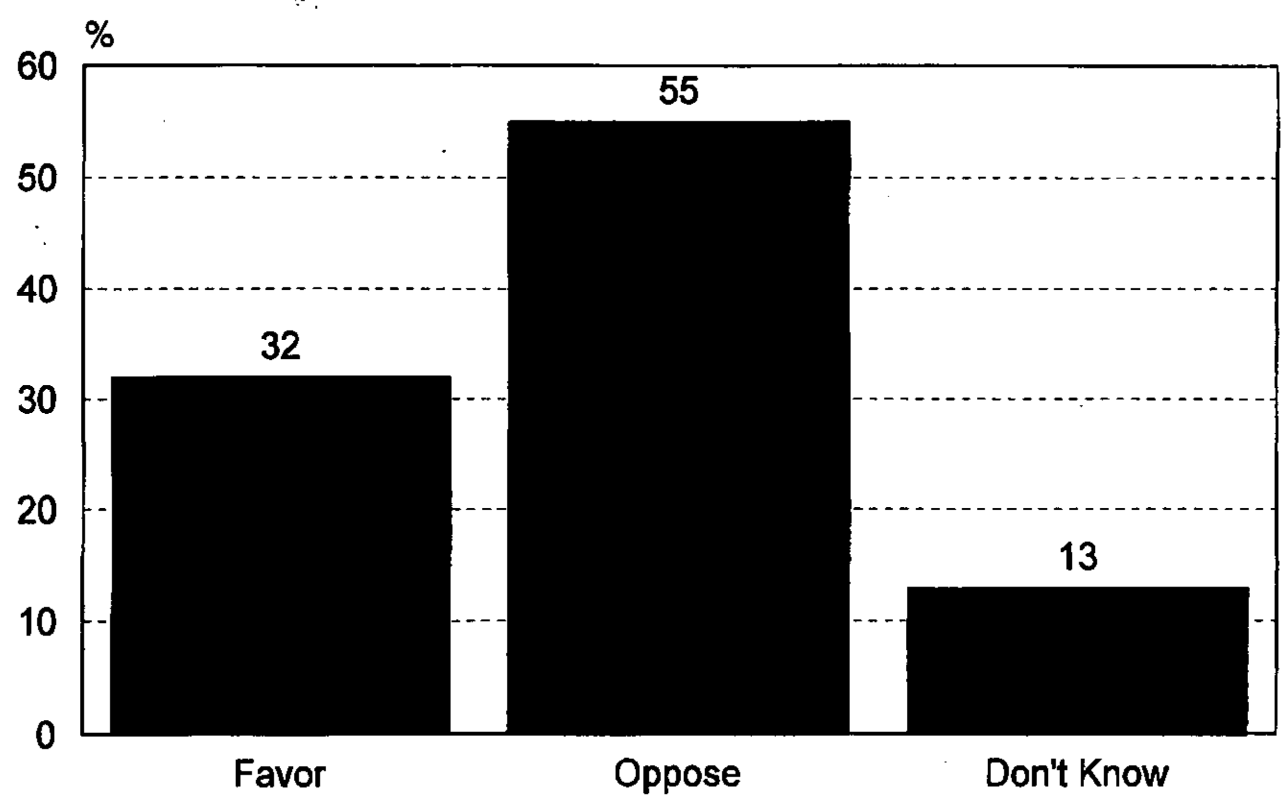
# Comparison of Tobacco Revenue and Spending

## President's Budget and Healthy Kids Act

| | Healthy Kids Act | President's Budget |
|---|---|---|
| Total Revenue (over five years) | about $78 billion (estimate pending) | $65.5 billion |
| States -- unrestricted | $12 billion | $11.8 billion |
| States – for child care, education , health insurance | $18 billion | $15.7 billion |
| Research | $17 billion for NIH research | $25.3 billion ($17 B for NIH; $8 B for non-health) |
| Medicare | $3 billion | $0.8 billion |
| Farmers<br>Anti-tobacco | $10 billion<br>$13 billion | $12.1 billion for both |
| Savings for Social Security | $5 billion | 0 |

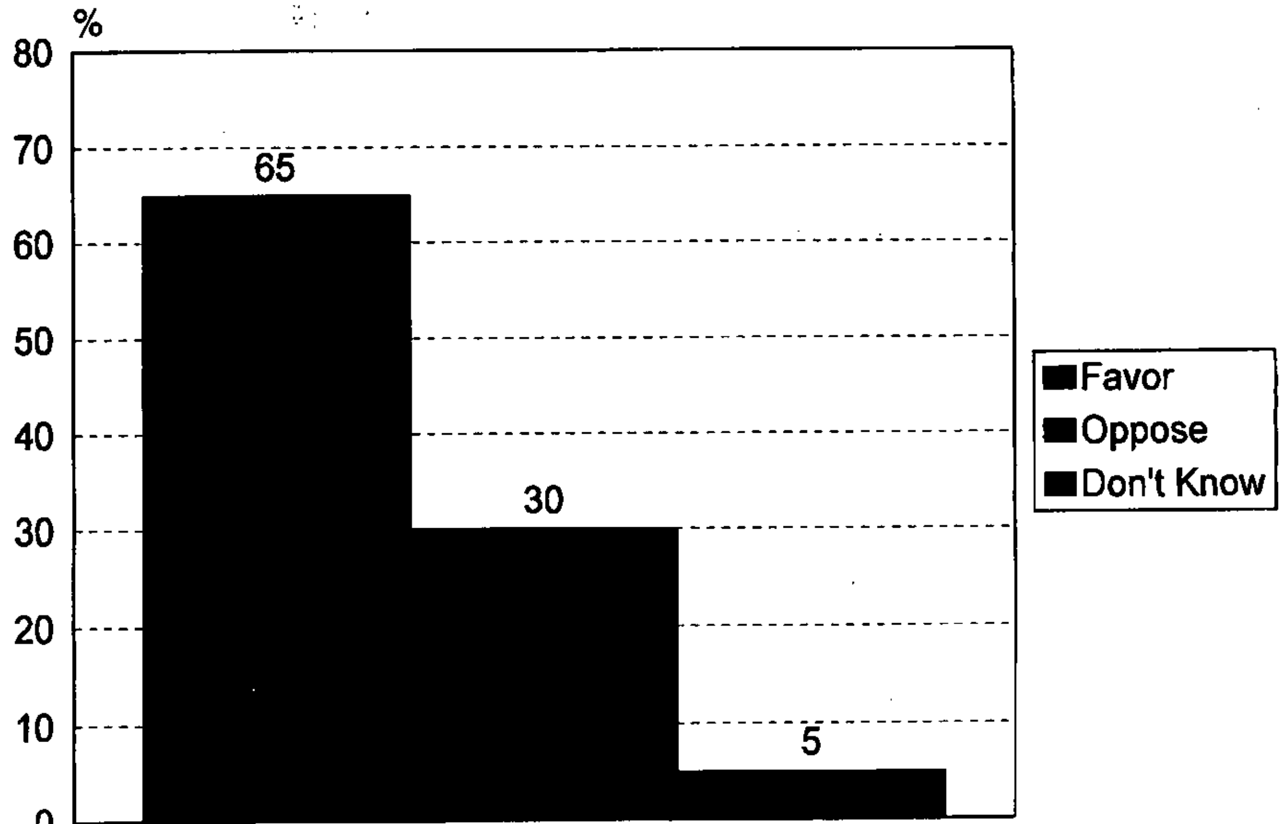
Five Year Projections

# Voters Are Opposed to Providing Special Protections to the Tobacco Industry




Source: Lake, Sosin, Snell, Perry Assoc. Survey, 1/98

## Voters Support a $1.50 Health Fee for Youth Smoking Deterrence & Health Programs by a 2-1 Margin




Source: Lake, Sosin, Snell, Perry Assoc. Survey, 1/98

# KIDS DESERVE FREEDOM FROM TOBACCO ACT OF 1998

## "The KIDS Act"

## At-A-Glance

| | |
|---|---|
| **Increase Cigarettes by $1.50 Per Pack in 2 Years** | The KIDS Act would increase the price of a pack of cigarettes by $1.50 within 2 years: by $1.00 per pack the first year, and by an additional $0.50 the second year. The price of other tobacco products would be increased by a comparable amount. These increases would be achieved through annual industry payments totaling $20 billion the first year and $25 billion per year thereafter (indexed to inflation). |
| **Aggressive and Escalating Look-Back Penalties** | Based on recommendations made by the Koop-Kessler Advisory Look-Back Penalties Committee, the KIDS Act is designed to reduce youth smoking by at least 65% over the next ten years. Both industry-wide and company-specific penalties for failure to achieve targeted reductions in youth smoking would be assessed. These penalties could add an additional $10 billion per year to industry payments. Furthermore, all penalties would be non tax-deductible. |
| **State Bonus Pool** | The KIDS Act is the only proposal designed to reward states that meet or exceed state-specific youth reduction targets. A "performance bonus pool" would be established as an economic incentive for states and localities to develop aggressive and innovative anti-smoking strategies suited to their own individual needs and populations. |
| **Significant Marketing and Advertising Reforms** | The KIDS Act would fundamentally alter tobacco marketing and advertising practices to eliminate promotional activities aimed at children. Provisions in the Act would build on the FDA rule by adding the advertising and marketing restrictions included in the proposed June 1997 Tobacco Agreement. |
| **Full FDA Authority** | The KIDS Act would affirm the FDA's authority over tobacco products -- without any of the procedural constraints proposed by the June 1997 Tobacco Agreement. The bill would classify nicotine as a drug and tobacco products as drug delivery devices, and allow FDA to implement a "public health" standard in its review of tobacco products. |
| **Comprehensive Prevention and Cessation Efforts** | The KIDS Act would fund a comprehensive slate of public health activities to reduce tobacco use and promote cessation, including school-based activities and an intensive, sustained media campaign to "deglamorize" tobacco use among young people. Many of these initiatives would be designed and implemented at the local level to ensure responsiveness to each community's needs. |

| | |
|---|---|
| **Expanded Health Research** | The KIDS Act would strengthen research aimed at identifying and developing the most effective tobacco prevention and cessation strategies possible. Moreover, it would provide for a significant expansion of medical research. |
| **Timely Payment of Awards and Settlements** | To ensure that resources are readily available for the victims of tobacco-related diseases, the KIDS Act would establish a pre-funded National Victims' Compensation Fund from which court awards and settlements would be paid. Annual industry payments to the Fund would be capped at $8 billion. This cap would apply only to civil claims against past wrongdoing by the industry.<br><br>The Kids Act would fully preserve the rights of individuals and groups to utilize the civil justice system to recover tobacco-related damages. |
| **Settlement of State Suits and Castano Class Action Suits** | The KIDS Act would give states the opportunity to settle their suits in exchange for funding from the National Tobacco Trust Fund established under this Act. In addition, the Castano Class Action lawsuits would be settled in return for the establishment of smoking cessation programs. |
| **Tough Document Disclosure Requirements** | The KIDS Act would require tobacco manufacturers and their agents to disclose all previously non-public, internal documents relating to the health effects, safety, and marketing of their products to children. As a precondition of eligibility for the annual cap on awards and settlements, tobacco companies would be required to waive attorney-client privilege on key documents. |
| **Reducing Exposure to Environment Tobacco Smoke (ETS)** | The KIDS Act would provide strong protections for workers and the public against exposure to ETS. In addition, our bill would place significant emphasis on reducing ETS exposure in the home through such measures as pediatric outreach, public service announcements, and a comprehensive media campaign. |
| **International Leadership** | The KIDS Act would provide clear leadership on international efforts to reduce tobacco use. This proposal would end U.S. Government support for tobacco promotion overseas, fund global education and anti-smuggling initiatives, and encourage our participation with other nations in efforts to strengthen tobacco policies worldwide. |
| **Assistance for Tobacco Farming Communities** | The KIDS Act would provide funding for transitional assistance to tobacco farming families, and for economic development and related assistance to tobacco-dependent communities. |

Tob-sr - new legis - conrad bill

105TH CONGRESS
2D SESSION

# S. ______

IN THE SENATE OF THE UNITED STATES

Mr. CONRAD (for himself, Mr. DASCHLE, Mr. KENNEDY, Mr. LAUTENBERG, Mr. REED, Mr. LEAHY, Mr. DODD, Mr. BINGAMAN, Mr. DURBIN, Mr. BAUCUS, Mr. DORGAN, Mr. ROCKEFELLER, Mr. KERREY, Mr. WYDEN, Mr. WELLSTONE, Mr. TORRICELLI, Mrs. BOXER, Mr. KERRY, Mr. BUMPERS, Mr. MOYNIHAN, Mr. JOHNSON, Mr. BREAUX, Mr. KOHL, Ms. LANDRIEU, Ms. MOSELEY-BRAUN, Mr. BRYAN, Mr. AKAKA, ______ ______ ______) introduced the following bill; which was read twice and referred to the Committee on ______

# A BILL

To help parents keep their children from starting to use tobacco products, to expose the tobacco industry's past misconduct and to stop the tobacco industry from targeting children, to eliminate or greatly reduce the illegal use of tobacco products by children, to improve the public health by reducing the overall use of tobacco products, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

(a) SHORT TITLE.—This Act may be cited as the "Healthy Kids Act".

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

## SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Approximately 3,000 children begin smoking each day. 1,000 of these children will die prematurely from a tobacco-related illness or condition.

(2) The tobacco industry has targeted tobacco product marketing and promotional efforts toward

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

(3) Approximately 90 percent of smokers start by the time they are 18 years old. Half of all smokers start by age 14.

(4) Although most children plan to quit smoking after experimenting, the vast majority find that they have become addicted and cannot quit.

(5) Seventy percent of adult smokers would like to quit smoking, but the tobacco industry has manipulated the level of nicotine in tobacco products and added ingredients to enhance the addictive effects of nicotine to ensure that users of these products remain addicted.

(6) Tobacco products cause cancer, heart disease, lung disease, and other fatal illnesses. More than 400,000 Americans die each year of these tobacco-related illnesses and conditions.

(7) Tobacco-related illnesses, medical conditions resulting from tobacco use, and lost wages and productivity cost the United States in excess of $100,000,000,000 annually.

(8) Federal and State taxpayers spend tens of billions of dollars annually paying for the medicare, medicaid, and other Federal and State health pro-

gram costs arising from tobacco-related illnesses and conditions.

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

(10) Nicotine is an addictive drug. The marketplace for tobacco products is largely based on addiction.

(11) Worldwide, smoking kills 3,000,000 people each year. If current smoking patterns continue, tobacco use will kill 10,000,000 people a year by 2025.

(12) Environmental tobacco smoke is responsible for 3,000 lung cancer deaths annually in American nonsmokers. Environmental tobacco smoke also harms children's health.

(13) In 1995, the tobacco industry spent close to $4,900,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

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

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

(16) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(17) Children are exposed to substantial and unavoidable tobacco advertising, that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(18) Tobacco advertising increases the size of the tobacco market by increasing consumption of tobacco products including increasing tobacco sales to young people.

(19) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands, and children as young as 3 to 6 can

recognize a character associated with smoking at the same rate that they recognize cartoons and fast food characters.

(20) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market.

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

(22) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(23) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones. Text only requirements, while not as stringent as a ban, will accomplish this purpose while preserving the informational function of advertising.

**SEC. 3. PURPOSES.**

The purposes of this Act are—

(1) to help American families dramatically reduce the number of children illegally using tobacco products by—

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

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

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

(D) imposing penalties on manufacturers for failing to reach youth smoking rate reduction targets;

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

(F) giving the Food and Drug Administration and State and local governments the authority and resources to keep tobacco products out of the hands of minors;

(2) to compensate taxpayers for their costs attributable to tobacco-related illnesses by reimbursing the medicaid and medicare programs and resolving the legal claims of Federal, State and local governments for those costs that resulted from past misconduct by the tobacco industry;

(3) to improve the public health by reducing the number of adult users of tobacco products through approved cessation programs and limiting public exposure to environmental tobacco smoke;

(4) to provide assistance to tobacco farmers, tobacco factory workers, and rural communities;

(5) to affirm the full authority of the Food and Drug Administration to regulate the manufacture, labeling, sale, distribution, and advertising of tobacco products to the fullest extent authorized by the commerce clause of the United States Constitution;

(6) to make available to the public tobacco industry documents regarding the health effects of tobacco products, addiction, the agricultural production of tobacco, the manufacture of tobacco products, the distribution of tobacco products, and the marketing of tobacco products to youths; and

(7) to enhance global anti-tobacco efforts to minimize the adverse health effects of tobacco products.

**SEC. 4. DEFINITIONS.**

In this Act:

(1) BRAND.—The term "brand" means a variety of a tobacco product distinguished by the tobacco

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

(2) CIGAR.—The term "cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette or cigarillo within the meaning of paragraph (3) or (4)).

(3) CIGARETTE.—The term "cigarette" means—

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

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

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

(5) CIGARETTE TOBACCO.—The term "cigarette tobacco" means any product that consists of loose

tobacco and is intended for use by persons in a cigarette. Unless otherwise stated, the requirements of this Act pertaining to cigarettes shall also apply to cigarette tobacco.

(6) DISTRIBUTOR.—The term "distributor" means any person who furthers the distribution of tobacco products, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Such term shall not include common carriers.

(7) LITTLE CIGAR.—The term "little cigar" means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (1)) and as to which 1,000 units weigh not more than 3 pounds.

(8) MANUFACTURER.—The term "manufacturer" means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product.

(9) PACKAGE.—The term "package" means a pack, box, carton, or container of any kind in which tobacco products are offered for sale, sold, or otherwise distributed to consumers.

(10) PERSON.—The term "person" means an individual, partnership, corporation, parent corporation, or any other business or legal entity or successor in interest of any such person.

(11) PIPE TOBACCO.—The term "pipe tobacco" means any loose tobacco that, because of its appearance, type, packaging, or labeling, is likely to be offered to, or purchased by, consumers as a tobacco product to be smoked in a pipe.

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

(13) RETAILER.—The term "retailer" means any person who sells tobacco products to individuals for personal consumption, or who operates a facility where vending machines or self-service displays are permitted under this Act.

(14) ROLL-YOUR-OWN TOBACCO.—The term "roll-your-own tobacco" means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(15) SALE.—The term "sale" includes the selling, providing samples of, or otherwise making tobacco products available for personal consumption in any place within the scope of this Act.

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

(17) SMOKELESS TOBACCO.—The term "smokeless tobacco" means any product that consists of cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity.

(18) STATE.—The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States. Such term includes any political division of any State.

(19) TOBACCO.—The term "tobacco" means tobacco in its unmanufactured form.

(20) TOBACCO PRODUCT.—The term "tobacco product" means any product made of or derived from tobacco leaf for human consumption, including, but not limited to, cigarettes, cigarillos, cigarette to-

bacco, cigars, little cigars, pipe tobacco, and smokeless tobacco, and roll-your-own tobacco.

(21) TRUST FUND.—Except as provided in section 121 and title IV, the term "Trust Fund" means the Health Enhancement and Lowered Tobacco Hazards for Young Kids Trust Fund established under section 101.

# TITLE I—HEALTHY KIDS TRUST FUND

## Subtitle A—General Provisions

### SEC. 101. ESTABLISHMENT OF TRUST FUND.

(a) CREATION.—

(1) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the "Health Enhancement and Lowered Tobacco Hazards for Young Kids Trust Fund" (referred to as the "HEALTHY Kids Trust Fund"), consisting of such amounts as may be appropriated or credited to the Trust Fund.

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

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

(1) amounts received under the annual assessments made under section 102;

(2) amounts paid as fines or penalties, including interest thereon, under section 103; and

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

(c) REPAYABLE ADVANCES.—

(1) AUTHORIZATION.—There are authorized to be appropriated to the Trust Fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures described in subsection (d).

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

(3) RATE OF INTEREST.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining

period to maturity comparable to the anticipated period during which the advance will be outstanding.

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

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

(2) 17 percent of such amounts shall be made available for grants to the States for child care and early childhood development as provided for in section 131.

(3) 6 percent of such amounts shall be made available for grants to States for education as provided for in section 132.

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

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

(A) $300,000,000 shall be made available to the Secretary to carry out chapter IX of the Food Drug and Cosmetic Act (as added by section 204);

(B) $200,000,000 shall be made available to the Indian Health Service to be used as provided for in title IX; and

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

(6) 21 percent of such amounts shall be made available to the National Institutes of Health Trust Fund for Health Research for the conduct of health research as provided for in section 121.

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

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

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

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

(8) For the Hospital Insurance Trust Fund—

(A) 4 percent of such amounts shall be made available to such Trust Fund for each of the first 10 fiscal years after the date of enactment of this Act (less amounts made available under paragraph (9) for the first 3 such fiscal years);

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

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

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

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

(10) For reducing the debt—

(A) 6 percent of such amounts shall be made available for such reduction in each of the first 10 fiscal years after the date of enactment of this Act;

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

(C) 11 percent of such amounts shall be made available for such reduction in each of the 16th through 25th fiscal years after the date of enactment of this Act; and

(D) 12 percent of such amounts shall be made available for such reduction in each subsequent fiscal year.

(e) BUDGETARY TREATMENT AND DEFINITION.—

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

(A) by the Office of Management and Budget in the estimates and reports required by sections 252(b) and 254 of the Balanced Budget and Emergency Deficit Control Act of 1985; and

(B) by the Committee on the Budget of the House of Representatives and the Committee on the Budget of the Senate for purposes of congressional enforcement under section 302(f) and 311(2)(B) of the Congressional Budget Act of 1974 and section 202 of House Concurrent Resolution 67 (104th Congress).

(2) DEFINITION.—In subsection (d)109), the term "debt" means any obligation of the Federal Government included in the debt subject to limit.

**SEC. 102. LIABILITY OF TOBACCO PRODUCT MANUFACTURERS.**

(a) PAYMENTS.—

(1) INITIAL PAYMENT --Not later than 90 days after the date of enactment of this Act, each manufacturer shall pay to the Trust Fund an amount that bears the same ratio to $15,000,000,000 as the average stock market capitalization of the tobacco manufacturer (as defined in paragraph (3)) bears to the average stock market capitalization of all tobacco manufacturers for 1996.

(2) ANNUAL ASSESSMENTS AND COLLECTION.—For each calendar year beginning with the first full calendar year following the year in which this Act is enacted, the Secretary shall assess each manufacturer an amount determined under subsection (b). Such assessments shall be collected in a manner similar to the manner in which excise taxes are collected under chapter 52 of the Internal Revenue Code of 1986.

(3) AVERAGE STOCK MARKET CAPITALIZATION.—For purposes of this subsection, the average stock market capitalization of a manufacturer for a year shall be determined by the Secretary of the Treasury based on data submitted by manufacturers and other appropriate data. Such determinations shall be made regardless of whether the manufacturer issues stock.

(b) ANNUAL ASSESSMENTS.—The Secretary shall assess each manufacturer (in accordance with regulations, relating to the timing and method of payment of assessments, to be promulgated by the Secretary of the Treasury) an amount in accordance with the following:

(1) SMALL CIGARETTES.—With respect to a manufacturer of cigarettes weighing not more than 3 pounds per thousand, the assessment shall equal—

(A) for cigarettes removed during calendar year 1999, $25 per thousand;

(B) for cigarettes removed during calendar year 2000, $50 per thousand; and

(C) for cigarettes removed during calendar year 2001, $75 per thousand.

(2) LARGE CIGARETTES.—

(A) IN GENERAL.—With respect to a manufacturer of cigarettes weighing more than 3 pounds per thousand, the assessment shall equal—

(i) for cigarettes removed during calendar year 1999, $52.50 per thousand;

(ii) for cigarettes removed during calendar year 2000, $105 per thousand; and

(iii) for cigarettes removed during calendar year 2001, $157.50 per thousand.

(B) EXCEPTION.—On cigarettes more than 6½ inches in length, at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(3) SMALL CIGARS.—With respect to a manufacturer of cigars weighing not more than 3 pounds per thousand, the assessment shall equal—

(A) for cigars removed during calendar year 1999, $25 per thousand;

(B) for cigars removed during calendar year 2000, $50 per thousand; and

(C) for cigars removed during calendar year 2001, $75 per thousand.

(4) LARGE CIGARS.—With respect to a manufacturer of cigars weighing more than 3 pounds per thousand, the assessment shall equal—

(A) for cigars removed during calendar year 1999, 25 percent of the price for which such cigars are sold but not more than $500 per thousand;

(B) for cigars removed during calendar year 2000, 50 percent of the price for which such cigars are sold but not more than $1,000 per thousand; and

(C) for cigars removed during calendar year 2001, 75 percent of the price for which such cigars are sold but not more than $1,500 per thousand.

(5) SNUFF.—With respect to a manufacturer of snuff (as such term is defined for purposes of chapter 52 of the Internal Revenue Code of 1986) the assessment shall equal—

(A) for snuff removed during calendar year 1999, $6.67 per pound (and a proportionate assessment at the like rate on all fractional parts of a pound);

(B) for snuff removed during calendar year 2000, $13.33 per pound (and a proportionate assessment at the like rate on all fractional parts of a pound); and

(C) for snuff removed during calendar year 2001, $20 per pound (and a proportionate assessment at the like rate on all fractional parts of a pound).

(6) CHEWING TOBACCO.—With respect to a manufacturer of chewing tobacco (as such term is defined for purposes of chapter 52 of the Internal Revenue Code of 1986) the assessment shall equal—

(A) for chewing tobacco removed during calendar year 1999, $2.67 per pound (and a proportionate assessment at the like rate on all fractional parts of a pound);

(B) for chewing tobacco removed during calendar year 2000, $5.33 per pound (and a proportionate assessment at the like rate on all fractional parts of a pound); and

(C) for chewing tobacco removed during calendar year 2001, $8 per pound (and a proportionate assessment at the like rate on all fractional parts of a pound).

(7) PIPE TOBACCO.—With respect to a manufacturer of pipe tobacco (as such term is defined for purposes of chapter 52 of the Internal Revenue Code of 1986) the assessment shall equal—

(A) for pipe tobacco removed during calendar year 1999, $5.33 per pound (and a proportionate assessment at the like rate on all fractional parts of a pound);

(B) for pipe tobacco removed during calendar year 2000, $10.67 per pound (and a proportionate assessment at the like rate on all fractional parts of a pound); and

(C) for pipe tobacco removed during calendar year 2001, $16.00 per pound (and a proportionate assessment at the like rate on all fractional parts of a pound).

(8) ROLL-YOUR-OWN TOBACCO.—With respect to a manufacturer of roll-your-own tobacco the assessment shall equal—

(A) for roll-your-own tobacco removed during calendar year 1999, $5.71 per pound (and a proportionate assessment at the like rate on all fractional parts of a pound);

(B) for roll-your-own tobacco removed during calendar year 2000, $11.43 per pound (and a proportionate assessment at the like rate on all fractional parts of a pound); and

(C) for roll-your-own tobacco removed during calendar year 2001, $17.14 per pound (and a proportionate assessment at the like rate on all fractional parts of a pound).

(c) INFLATION ADJUSTMENT.—In the case of a calendar year after 2001, the dollar amount described in subparagraph (C) of paragraphs (1), (2), (3), (4), (5), (6), (7), and (8), and the percentage in subparagraph (C) of paragraph (4), applicable to the preceding calendar year shall be increased by an amount equal to—

(1) such dollar amount (or percentage), multiplied by

(2) the greater of—

(A) the medical consumer price percentage increase for such calendar year as determined in the same manner as the adjustment is determined under section 1(f)(3) of the Internal Revenue Code of 1986 for such calendar year by substituting "the second preceding calendar year" for "calendar year 1992" in subparagraph (B) thereof; or

(B) 3 percent.

(d) ASSESSMENTS APPLICABLE TO FLOOR STOCKS.—

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

(A) the assessment which would be imposed under subsection (b) on the product if the product had been removed on such date, over

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

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

(A) LIABILITY FOR ASSESSMENT.—A person holding tobacco products on any assessment date, to which any assessment imposed under paragraph (1) applies shall be liable for such assessment.

(B) METHOD OF PAYMENT.—The assessment imposed under paragraph (1) shall be paid in such manner as the Secretary of the Treasury shall prescribe by regulations.

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

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

(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such product before such date; or

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

(4) ASSESSMENT DATE.—The term "assessment date" means January 1.

(e) NO TAX BENEFIT.—

(1) IN GENERAL.—The initial payment described in subsection (a)(1) shall not be considered to be an ordinary and necessary expense in carrying on a trade or business for purposes of the Internal Revenue Code of 1986 and shall not be tax deductible.

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

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

(1) in subparagraph (F)(iii), by striking "or" at the end;

(2) in subparagraph (G), by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(H) a payment, an assessment, or a penalty to be paid into the Health Enhancement and Lowered Tobacco Hazards for Young Kids Trust Fund under section 102 (or any other section) of the Healthy Kids Act.".

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

(h) HEALTHY KIDS STAMP.—The Secretary shall promulgate regulations to provide that a Healthy Kids Stamp be affixed to each package of a tobacco product for which an assessment has been paid under this section.

(i) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

(1) EXEMPTION.—

(A) IN GENERAL.—A manufacturer described in paragraph (2) shall be exempt from the requirements of this section relating to—

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

(ii) the payment of that portion of the annual assessments under this section that will be provided under paragraphs (1) through (4) of section 101(d) to States with which such manufacturer has settled tobacco-related civil actions as of the date of enactment of this Act as determined by the Secretary under subparagraph (B).

(B) DETERMINATION.—For purposes of subparagraph (A)(ii), the Secretary shall determine the amount of the assessments involved that will be provided under paragraphs (1) through (4) of section 101(d) to States described in such subparagraph based on the ratio described in section 111(b)(2)(A) with respect to such States. Such amount shall be deducted from the aggregate assessment due from the manufacturer involved.

(2) MANUFACTURER.—A manufacturer described in this section is a manufacturer that has resolved tobacco-related civil actions with more than 25 States prior to January 1, 1998 through judicial consent decrees.

(3) LIMITATION.—The provisions of paragraph (1) shall apply only to assessments on cigarettes to the extent that such cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed for consumer use in any year.

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

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

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

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

(2) to be eligible to receive the protections provided under subtitle A of title VII.

(c) NONPAYMENT OF ASSESSMENTS.—A manufacturer or importer shall not be eligible to receive a license under this section if such manufacturer or importer has failed to pay the payment of assessment required under section 102.

(d) REVOCATION AND SUSPENSION.—The Secretary shall promulgate regulations to provide for the enforcement of the program established under section (a). Such regulations shall provide for the revocation or suspension of a license for nonpayment of required assessments.

**SEC. 104. ENFORCEMENT.**

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

(b) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) on any failure with respect to a manufacturer shall be established by the Secretary of the Treasury for each day during the noncompliance period, except that no such penalty shall be less than $25,000 plus interest.

(c) NONCOMPLIANCE PERIOD.—For purposes of this section, the term "noncompliance period" means, with respect to any failure to pay an assessment under section 102, the period—

(1) beginning on the due date for such payment; and

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

# Subtitle B—Payments

## CHAPTER 1—TO STATES

### SEC. 111. PAYMENTS TO STATES.

(a) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—The amounts made available for a fiscal year under section 101(d)(1) shall be made available to carry out subsections (b) and (d).

(2) NO OVERPAYMENT.—With respect to the amount provided to a State under paragraph (1) for a fiscal year, the Secretary shall not treat such amount as an overpayment under any joint Federal-State health program.

(3) FISCAL YEAR LIMITATION.—Amounts made available for a fiscal year under subsection (b) shall not exceed the amount available for such fiscal year under section 101(d)(1).

(b) REIMBURSEMENT.—

(1) IN GENERAL.—The Secretary shall use amounts made available under subsection (a)(1) in

each fiscal year to provide funds to each State that is eligible under subsection (c) to reimburse such State for amounts expended by the State under the State program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or any other State health program for the treatment of individuals with tobacco-related illnesses or conditions.

(2) AMOUNT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amount for which a State is eligible under paragraph (1) shall be based on the ratio of the total Federal payments to the State under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for the fiscal year involved to the total Federal payments to all States under such title for such fiscal year.

(B) SPECIAL PAYMENT RULE.—In the case of a State that, as of the date of the enactment of this Act, has resolved tobacco-related civil actions through judicial consent decrees with a manufacturer described in section 102(i), the amount determined under subparagraph (A) shall be reduced by an amount equal to the amount by which such manufacturer's payment under section 102(a)(2) is reduced under section 102(i) as a result of such settlement.

(3) ADJUSTMENT.—With respect to a fiscal year in which the amount determined under paragraphs (1) and (2) of subsection (a) exceeds the limitation under subsection (a)(3), the Secretary shall make pro rata reductions in the amounts provided to States under this subsection.

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

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

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

(B) to reimburse the State for other expenses incurred by the State in providing directly, or reimbursing others for the provision of, treatment for tobacco-related illnesses or conditions; and

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

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

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

(2) prepare and submit to the Secretary for approval a plan describing the manner in which the State will comply with the requirements of subsection (d) and a certification that all actions described in paragraph (1) have been resolved; and

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

(d) FUNDS FOR LOCAL GOVERNMENTAL ENTITIES.—To be eligible to receive funds under subsection (b), a State shall have adopted procedures to provide an equitable portion of such funds to local governmental entities within the State that can demonstrate that such entities incurred tobacco-related health costs through—

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

(2) the provision of indigent care;

(3) the provision of health care coverage to governmental employees; or

(4) the implementation of tobacco product enforcement or tobacco product regulatory requirements in accordance with this Act.

## CHAPTER 2—FEDERAL HEALTH PROGRAMS

### SEC. 121. NATIONAL INSTITUTES OF HEALTH TRUST FUND FOR HEALTH RESEARCH.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "National Institutes of Health Trust Fund for Health Research" (hereafter referred to in this section as the "Trust Fund"), consisting of such amounts as may be appropriated or transferred to the Trust Fund as provided in this section.

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

(c) OBLIGATIONS FROM TRUST FUND.—

(1) IN GENERAL.—Subject to the provisions of paragraph (4), with respect to the amounts made available in the Trust Fund in a fiscal year, the Secretary shall distribute during any fiscal year—

(A) 2 percent of such amounts to the Office of the Director of the National Institutes of Health to be allocated at the Director's discretion—

(i) for carrying out the responsibilities of the Office of the Director, including the Office of Research on Women's Health and the Office of Research on Minority Health, the Office of Alternative Medicine, the Office of Rare Disease Research, the Office of Behavioral and Social Sciences Research (for use for efforts to reduce tobacco use), the Office of Dietary Supplements, and the Office for Disease Prevention; and

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

(B) 2 percent of such amounts for transfer to the National Center for Research Resources to carry out section 1502 of the National Institutes of Health Revitalization Act of 1993 concerning Biomedical and Behavioral Research Facilities;

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

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

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

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

(G) the remainder of such amounts to member institutes and centers, including the Office of AIDS Research, of the National Institutes of Health in the same proportion to such remainder, as the amount of annual appropriations under appropriations Acts for each member institute and center for the fiscal year bears to the total amount of appropriations under appropriations Acts for all member institutes and centers of the National Institutes of Health for the fiscal year.

(2) PLANS OF ALLOCATION.—The amounts transferred under paragraph (1)(G) shall be allocated by the Director of the National Institutes of Health or the various directors of the institutes and centers, as the case may be, pursuant to allocation plans developed by the various advisory councils to such directors, after consultation with such directors.

(3) GRANTS AND CONTRACTS FULLY FUNDED IN FIRST YEAR.—With respect to any grant or contract funded by amounts distributed under paragraph (1), the full amount of the total obligation of such grant or contract shall be funded in the first year of such grant or contract, and shall remain available until expended.

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

(A) TRIGGER AND RELEASE.—No expenditure shall be made under paragraph (1) during any fiscal year in which the annual amount appropriated for the National Institutes of Health is less than the amount so appropriated for fiscal year 1999.

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

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

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

(iii) 75 percent of the amount in the Trust Fund is distributed in the third fiscal year for which funds are available; and

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

## CHAPTER 3—INVESTMENTS FOR CHILDREN

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

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

(1) Improving the affordability of child care through increased appropriations for child care

under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

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

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

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

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

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

(a) GRANTS AUTHORIZED.—The Secretary of Education shall use amounts made available under section 101(d)(3) for a fiscal year to award grants to States and local educational agencies to train, recruit and hire elementary school teachers for the purpose of reducing the average class size for students in grades 1 through 3 to not more than 18 students per teacher.

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

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

(2) teacher preparation and certification; and

(3) accountability for improved student achievement.

(c) STATE PLAN.—

(1) IN GENERAL.—Each State desiring a grant under this section shall submit to the Secretary of Education a State plan at such time, in such man-

ner, and accompanied by such information as the Secretary may require.

(2) CONTENTS.—Each State plan shall demonstrate to the satisfaction of the Secretary of Education that—

(A) the activities assisted by the State with funds made available under this section will be conducted in compliance with any regulations promulgated under subsection (a);

(B) the State will use the funds made available under this section to reduce class size for students in grades 1 through 3 in elementary schools throughout the State, focusing on using the funds to train, recruit, and hire teachers for elementary schools serving communities with the least available resources for such activities and the largest class sizes in those grades; and

(C) of the funds that are made available to the State under this section, the State will make available to each local educational agency that serves children in grades 1 through 3 and in which at least 30 percent of the children are from families below the Federal poverty level, at least as great a percentage of such funds as the percentage of funds provided to that local educational agency as compared to other local educational agencies in the State under part A of title I of the Elementary and Secondary Education Act of 1965.

(3) APPROVAL.—The Secretary shall approve a State plan submitted under paragraph (1) if the State plan meets the requirements of this subsection.

(d) SUPPLEMENT NOT SUPPLANT.—Amounts made available to a State under this section shall be used to supplement and not supplant other Federal, State and local funds provided for programs that improve elementary education as provided for in this section. Amounts provided to the State under this section shall not be reduced solely as a result of the availability of funds under this section.

**SEC. 133. INCREASED ENROLLMENT OF CHILDREN WITH THE MEDICAID AND STATE CHILDREN'S HEALTH INSURANCE PROGRAMS.**

(a) TRANSITIONAL INCREASED FEDERAL MATCHING RATE FOR INCREASED MEDICAID ADMINISTRATIVE COSTS.—Section 1931(h) of the Social Security Act (42 U.S.C. 1396u–1(h)) is amended—

(1) in paragraph (2), by striking "attributable to" and all that follows and inserting "attributable to—

"(A) administrative costs of eligibility determinations that (but for the enactment of this section) would not be incurred; and

"(B) outreach activities to enroll uninsured children in a State plan approved under this title or title XXI."; and

(2) by striking paragraphs (3) and (4) and inserting the following:

"(3) LIMITATION.—

"(A) IN GENERAL.—Beginning with fiscal year 1998, the total amount of additional Federal funds that are expended as a result of the application of this subsection shall not exceed $525,000,000.

"(B) AVAILABILITY OF APPROPRIATION.—Any amount appropriated in accordance with this paragraph shall remain available until expended.

"(C) EQUITABLE DISTRIBUTION OF FUNDS.—In applying this paragraph, the Secretary shall ensure the equitable distribution of additional funds among the States.".

(b) MEDICAID PRESUMPTIVE ELIGIBILITY FOR LOW-INCOME CHILDREN.—

(1) IN GENERAL.—Section 1920A(b)(3) of the Social Security Act (42 U.S.C. 1396r–1a(b)(3)) is amended—

(A) in subparagraph (A)(i))—

(i) by striking "or (II)" and inserting ", (II)"; and

(ii) by inserting ", or (III) is an elementary school or secondary school, as such terms are defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), is a child care resource and referral agency, a child support enforcement agency, or is authorized to determine the eligibility of a child for obtaining child health assistance under title XXI that is in the form of coverage that meets the requirements of section 2103" before the semicolon; and

(B) in subparagraph (C), by striking "limiting the classes of" and inserting "imposing limitations on".

(2) RETROACTIVITY.—The amendments made by paragraph (1) take effect as if included in the en-

actment of section 4912 of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 571).

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

(1) IN GENERAL.—Section 2104(d) of the Social Security Act (42 U.S.C. 1397dd(d)) is amended to read as follows:

"(d) CERTAIN MEDICAID EXPENDITURES COUNTED AGAINST INDIVIDUAL STATE ALLOTMENTS.—The amount of the allotment otherwise provided to a State under subsection (b) or (c) for a fiscal year shall be reduced by the amount (if any) of the payments made to that State under section 1903(a) for expenditures claimed by the State during such fiscal year that is attributable to the provision of medical assistance to a child for which payment is made under section 1903(a)(1) on the basis of an enhanced FMAP under the fourth sentence of section 1905(b).".

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

(d) MEDICAID AND STATE CHILDREN'S HEALTH INSURANCE PROGRAM ELIGIBILITY FOR LEGAL IMMIGRANT CHILDREN WHO ENTERED THE UNITED STATES AFTER AUGUST 1996.—

(1) EXEMPTION FROM 5-YEAR BAN.—Section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613), as amended by sections 5302(c)(1)(B) and 5303(c) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 599, 600), is amended by adding at the end the following:

"(e) MEDICAID AND SCHIP BENEFITS FOR CERTAIN CHILDREN.—Notwithstanding any other provision of law, the limitations under section 401(a) and subsection (a) shall not apply to an individual who is under 19 years of age and who lawfully entered the United States after August 22, 1996, but only with respect to the eligibility of that individual for—

"(1) child health assistance under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.); and

"(2) medical assistance under title XIX of such Act (42 U.S.C. 1396 et seq.), if the individual is an optional targeted low-income child described in section 1905(u)(2)(B) of such Act (42 U.S.C. 1396d(u)(2)(B)).".

(2) NONAPPLICATION OF STATE AUTHORITY TO DETERMINE ELIGIBILITY FOR MEDICAID.—Section 402(b)(2) of the Personal Responsibility and Work

Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(b)(2)), as amended by sections 5303(b) and 5305(b) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 600, 601), is amended—

(A) in the matter preceding subparagraph (A), by striking "Qualified" and inserting "Except as provided in subparagraphs (A), (E), (F), and (G), qualified"; and

(B) by adding at the end the following:

"(G) MEDICAID EXCEPTION FOR CERTAIN CHILDREN.—With respect to eligibility for benefits for the program described in section 403(e)(2), paragraph (1) shall not apply to any individual described in that section.".

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

(e) ANNUAL PERFORMANCE BONUS FOR REDUCTION IN MEDICAID ELIGIBLE BUT UNENROLLED CHILDREN..—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended by adding at the end the following:

"(x) PERFORMANCE BONUS FOR REDUCTION IN ELIGIBLE BUT UNENROLLED CHILDREN.—

"(1) PERFORMANCE BONUS.—Beginning with fiscal year 1999, in addition to the amounts paid to a State under subsection (a), the Secretary shall pay to each State that has an approved plan under this title an amount equal to the performance bonus determined under paragraph (2).

"(2) PERFORMANCE BONUS.—

"(A) FORMULA.—The performance bonus for a State for a fiscal year is equal to the product of—

"(i) the excess baseline enrollment for the State for the fiscal year;

"(ii) the average per child expenditures by the State under this title for the fiscal year; and

"(iii) the difference between the enhanced FMAP and the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)) of the State for the fiscal year described in section 2105(b).

"(B) DETERMINATION OF THE EXCESS BASELINE ENROLLMENT.—

"(i) IN GENERAL.—For purposes of subparagraph (A)(i), the excess baseline enrollment for a State for a fiscal year is the difference between (I) the actual number of full year equivalent children enrolled under the State plan and (II) the baseline number of full year equivalent children that would be enrolled under the State plan in the absence of the performance bonus outreach efforts of the State.

"(ii) DETERMINATION OF THE BASELINE NUMBER OF FULL YEAR EQUIVALENT CHILDREN.—For purposes of clause (i)(II), the baseline number of full year equivalent children that would be enrolled under the State plan in the absence of the performance bonus outreach efforts of the State is—

"(I) in the case of fiscal year 1999, the actual number of full year equivalent children enrolled under the State plan in fiscal year 1998, increased by the national percentage increase for fiscal year 1999 in the number of full year equivalent children enrolled in all State plans under this title, as projected by the Congressional Budget Office in January 1998; and

"(II) in the case of any succeeding fiscal year, the baseline number of full year equivalent children that would be enrolled under the State plan in the absence of the performance bonus outreach efforts of the State determined for the preceding fiscal year, increased by the national percentage increase for that succeeding fiscal year in the number of full year equivalent children enrolled in all State plans under this title, as projected by the Congressional Budget Office in January 1998.

"(C) DETERMINATION OF AVERAGE PER CHILD EXPENDITURES.—For purposes of subparagraph (A)(ii), the average per child expenditures by a State under this title for a fiscal year is—

"(i) the total amount paid to the State under subsection (a)(1) that is attributable to medical assistance provided to children under the State plan; divided by "(ii) the actual number of full year equivalent children enrolled under the State plan in that fiscal year.

"(3) DATA REQUIREMENTS.—Each State shall submit to the Secretary such data, at such time and in such manner, as the Secretary determines is necessary to make the payments required under this subsection. The Secretary shall ensure that data is provided under this subsection in a manner that is consistent with other data reporting requirements for information required to be submitted by a State under this title and title XXI, and that avoids duplication of reporting requirements.

"(4) STATES WITH SIGNIFICANTLY HIGHER INCREASED ACTUAL ENROLLMENT THAN THE EXPECTED NATIONAL INCREASE.—For any fiscal year, if a State's actual full year equivalent children enrollment percentage increase over the preceding fiscal year is at least twice the estimated national percentage increase in such enrollment for that fiscal year, as projected by the Congressional Budget Office in January 1998, the State shall submit such additional information as the Secretary determines is necessary to verify that the increase is the result of the State reducing the number of unenrolled children who are eligible for medical assistance under this title in the State.

"(5) TIMING OF PERFORMANCE BONUS PAYMENTS; RECONCILIATION.—The Secretary shall pay the performance bonuses required under this subsection for a fiscal year not later than September 30 of the succeeding fiscal year based on reporting data that reflects each State's actual number of full year equivalent children enrolled under the State plan and average per child expenditures. A State shall provide the Secretary with access to any records or information relevant to the payment of a performance bonus under this subsection for the purposes of review or audit.

"(6) WAIVERS.—The provisions of this subsection apply to a State providing medical assistance under this title under waiver authority in the same manner as they apply to a State with an approved plan under this title.

"(7) LIMITATION.—Amounts paid to States for a fiscal year under this subsection shall not exceed the amount made available under section 101(d)(4) of the Healthy Kids Act for such fiscal year (less amounts paid to States under the amendments made by subsections (a) through (d) of section 133 of such Act).".

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

(a) ESTABLISHMENT.—The Secretary shall establish a 3-year demonstration project which provides for payment under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) of routine patient care costs—

(1) which are provided to an individual diagnosed with cancer and enrolled in the medicare program under such title as part of the individual's participation in an approved clinical trial program; and

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

(b) APPLICATION.—The beneficiary cost sharing provisions under the medicare program, such as deductibles, coinsurance, and copayment amounts, shall apply to any individual participating in a demonstration project conducted under this section.

(c) APPROVED CLINICAL TRIAL PROGRAM.—

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

(A) the National Institutes of Health;

(B) a National Institutes of Health cooperative group or a National Institutes of Health center; and

(C) the National Cancer Institute, with respect to programs that oversee and coordinate extramural clinical cancer research, trials sponsored by such Institute and conducted at designated cancer centers, clinical trials, and Institute grants that support clinical investigators.

(2) MODIFICATIONS IN APPROVED TRAILS.—Beginning 1 year after the date of enactment of this Act, the Secretary, in consultation with the Cancer Policy Board of the Institute of Medicine, may modify or add to the requirements of paragraph (1) with respect to an approved clinical trial program.

(d) ROUTINE PATIENT CARE COSTS.—

(1) IN GENERAL.—For purposes of this section, "routine patient care costs" shall include the costs associated with the provision of items and services that—

(A) would otherwise be covered under the medicare program if such items and services were not provided in connection with an approved clinical trial program; and

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

(2) EXCLUSION.—For purposes of this section, "routine patient care costs" shall not include the costs associated with the provision of—

(A) an investigational drug or device, unless the Secretary has authorized the manufacturer of such drug or device to charge for such drug or device; or

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

(e) STUDY.—The Secretary shall study the impact on the medicare program under title XVIII of the Social Security Act of covering routine patient care costs for individuals with a diagnosis of cancer and other diagnoses, who are entitled to benefits under such title and who are enrolled in an approved clinical trial program.

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

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