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**Tobacco-Settlement: New  
Legislation-Conrad Bill [2]**

1       **TITLE II—FDA JURISDICTION**  
2       **OVER TOBACCO PRODUCTS**

3       **SEC. 201. REFERENCE.**

4           Whenever in this title an amendment or repeal is ex-  
5 pressed in terms of an amendment to, or repeal of, a sec-  
6 tion or other provision, the reference shall be considered  
7 to be made to a section or other provision of the Federal  
8 Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

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

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

15       **SEC. 203. TREATMENT OF TOBACCO PRODUCTS AS DRUGS**  
16                               **AND DEVICES.**

17       (a) DEFINITIONS.—

18           (1) DRUG.—Section 201(g)(1) (21 U.S.C.  
19 321(g)(1)) is amended by striking “; and (D)” and  
20 inserting “; (D) nicotine in tobacco products; and  
21 (E)”.

22           (2) DEVICES.—Section 201(h) (21 U.S.C.  
23 321(h)) is amended—

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

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

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

5 “(4) a delivery component of a tobacco product;  
6 and”.

7 (3) OTHER DEFINITIONS.—Section 201 (21  
8 U.S.C. 321) is amended by adding at the end the  
9 following:

10 “(kk) The term ‘tobacco product’ means any product  
11 made or derived from tobacco leaf made for human con-  
12 sumption including, but not limited to, cigarettes,  
13 cigarillos, cigarette tobacco, cigars, little cigars, pipe to-  
14 bacco, and smokeless tobacco, and roll-your-own tobacco.

15 (b) REGULATORY AUTHORITY.—Section 503(g) (21  
16 U.S.C. 353(g)) is amended by adding at the end the fol-  
17 lowing:

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

22 (c) DEVICES.—Section 520(e)(1) (21 U.S.C.  
23 360j(e)(1)) is amended by striking “or use—” and insert-  
24 ing “or use, including restrictions on the access to, and  
25 the advertising and promotion of, tobacco products—”.

1 (d) MISBRANDING.—Section 502 (21 U.S.C. 360) is  
2 amended by adding at the end the following:

3 “(u) In the case of a tobacco product, it is sold, dis-  
4 tributed, advertised, or labeled in violation of this Act or  
5 the regulations promulgated under this Act.

6 “(v) The regulations promulgated in accordance with  
7 subchapter E shall, at a minimum, require that a tobacco  
8 product be deemed to be misbranded if the labeling of the  
9 package of the product, or any claim of the manufacturer  
10 in connection with the product, states or implies (as deter-  
11 mined by the Secretary) that the product presents a re-  
12 duced health risk unless it is demonstrated to the satisfac-  
13 tion of the Secretary that the product will achieve the best  
14 public health result, taking into account all relevant fac-  
15 tors including, but not limited to, the probability of the  
16 increased number of new users of tobacco products and  
17 the reduced probability that existing users of tobacco  
18 products will quit.”.

19 (e) ENFORCEMENT.—Section 301 (42 U.S.C. 331) is  
20 amended by adding at the end the following:

21 “(aa) The failure to comply with the requirements of  
22 section 581.

23 “(bb) The failure or refusal to comply with any of  
24 the requirements of subsections (a), (b) or (e) of section  
25 578.”.

1 (f) STATE AND LOCAL REQUIREMENTS.—Section  
2 521 (21 U.S.C. 360k) is amended—

3 (1) in subsection (a), by striking “subsection  
4 (b)” and inserting “subsections (b) and (c)”; and  
5 (2) by adding at the end the following:

6 “(c) This section shall not apply to devices that are  
7 tobacco products.”.

8 **SEC. 204. SAFETY AND EFFICACY STANDARD AND RECALL**  
9 **AUTHORITY.**

10 (a) SAFETY AND EFFICACY STANDARD.—Section  
11 513(a) (21 U.S.C. 360c(a)) is amended—

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

18 (2) in paragraph (2)—

19 (A) by redesignating subparagraphs (A),  
20 (B) and (C) as clauses (i), (ii) and (iii), respec-  
21 tively;

22 (B) by striking “(2) For” and inserting  
23 “(2)(A) For”; and

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

1       “(B) For purposes of paragraph (1)(B), subsections  
2 (c)(2)(C), (d)(2)(B), (e)(2)(A), (f)(3)(B)(i), and  
3 (f)(3)(C)(i), and sections 514, 519(a), 520(e), and 520(f),  
4 the safety and effectiveness of a device that is a tobacco  
5 product need not be found if the Secretary finds that the  
6 action to be taken under any such provision would achieve  
7 the best public health result. The finding as to whether  
8 the best public health result has been achieved shall be  
9 determined with respect to the risks and benefits to the  
10 population as a whole, including users and non-users of  
11 the tobacco product, and taking into account—

12           “(i) the increased or decreased likelihood that  
13 existing consumers of tobacco products will stop  
14 using such products; and

15           “(ii) the increased or decreased likelihood that  
16 those who do not use tobacco products will start  
17 using such products.”.

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

1 **SEC. 205. GENERAL HEALTH AND SAFETY REGULATION OF**  
2 **TOBACCO PRODUCTS.**

3 Chapter V (21 U.S.C. 351 et seq.) is amended by  
4 adding at the end the following:

5 **SUBCHAPTER F—TOBACCO PRODUCTS**

6 **“SEC. 571. PROMULGATION OF REGULATIONS.**

7 “Any regulations necessary to implement this sub-  
8 chapter shall be promulgated not later than 12 months  
9 after the date of enactment of this subchapter using notice  
10 and comment rulemaking (in accordance with chapter 5  
11 of title 5, United States Code). Such regulations may be  
12 revised thereafter as determined necessary by the Sec-  
13 retary.

14 **“SEC. 572. SCIENTIFIC ADVISORY COMMITTEE.**

15 “(a) **ESTABLISHMENT.**—Not later than 1 year after  
16 the date of enactment of this subchapter, the Secretary  
17 shall establish an advisory committee, to be known as the  
18 ‘Scientific Advisory Committee’, to assist the Secretary.

19 “(b) **MEMBERSHIP.**—

20 “(1) **IN GENERAL.**—The Secretary shall appoint  
21 as members of the Scientific Advisory Committee  
22 any individuals with expertise in the medical, sci-  
23 entific, or other technological data involving the  
24 manufacture and use of tobacco products, and of ap-  
25 propriately diversified professional backgrounds.

1           “(2) LIMITATIONS.—Notwithstanding section  
2           5(b) of the Federal Advisory Committee Act (5  
3           U.S.C. App. 3), the Secretary may not appoint to  
4           the Committee any individual who—

5                   “(A) is in the regular full-time employ of  
6                   the Federal Government;

7                   “(B) is, or is in the employ of, a manufac-  
8                   turer, distributor, or retailer of a tobacco prod-  
9                   uct, or organization substantially funded by  
10                  manufacturers, distributors, or retailers of to-  
11                  bacco products;

12                  “(C) is, or is in the employ of, an attorney  
13                  representing an entity described in subpara-  
14                  graph (B); or

15                  “(D) is, or is in the employ of, a consult-  
16                  ant employed by or under retainer to an entity  
17                  described in subparagraph (B).

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

21           “(c) COMPENSATION AND EXPENSES.—Members of  
22           the Scientific Advisory Committee shall be entitled to the  
23           same compensation and expenses as the compensation and  
24           expenses provided to members of the advisory committees  
25           established under section 514(b)(5)(B).



1       “(d) DUTIES.—The Scientific Advisory Committee  
2 shall—

3               “(1) provide assistance to the Secretary;

4               “(2) examine the effects of the alteration of the  
5 nicotine yield levels in tobacco products;

6               “(3) examine whether there is a threshold level  
7 below which nicotine yields do not produce depend-  
8 ence on the tobacco product involved, and, if so,  
9 what that level is; and

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

13 **“SEC. 573. PERFORMANCE STANDARDS.**

14       “(a) GENERAL RULE.—The Secretary may adopt a  
15 performance standard under section 514(a)(2) for a to-  
16 bacco product regardless of whether the product has been  
17 classified under section 513. Such standards may in-  
18 clude—

19              “(1) the reduction or elimination of nicotine  
20 yields of the product;

21              “(2) the reduction or elimination of other con-  
22 stituents or harmful components of the product; or

23              “(3) standards relating to any other require-  
24 ment pursuant to section 512(a)(2).

1       “(b) TOBACCO CONSTITUENTS.—The Secretary may  
2 require that a manufacturer test, report and disclose to  
3 bacco and tobacco smoke constituents, including labeling  
4 and advertising disclosures relating to such constituents,  
5 including, but not limited to, tar and nicotine.

6 **“SEC. 574. DISCLOSURE AND REPORTING OF TOBACCO AND**  
7                   **NONTOBACCO INGREDIENTS AND CONSTITU-**  
8                   **ENTS.**

9       “(a) DISCLOSURE OF ALL INGREDIENTS.—

10           “(1) IMMEDIATE AND ANNUAL DISCLOSURE.—  
11 Not later than 30 days after the date of enactment  
12 of this subchapter, and annually thereafter, each  
13 manufacturer of a tobacco product shall submit to  
14 the Secretary an ingredient list for each brand of to-  
15 bacco product it manufactures that contains the in-  
16 formation described in paragraph (2).

17           “(2) REQUIREMENTS.—The list described in  
18 paragraph (1) shall, with respect to each brand or  
19 variety of tobacco product of a manufacturer, in-  
20 clude—

21           “(A) a list of all ingredients, constituents,  
22 substances, and compounds that are found in or  
23 added to the tobacco or tobacco product (in-  
24 cluding the paper, filter, or packaging of the  
25 product if applicable) in the manufacture of the

1 tobacco product, for each brand or variety of to-  
2 bacco product so manufactured, including, if  
3 determined necessary by the Secretary, any ma-  
4 terial added to the tobacco used in the product  
5 prior to harvesting;

6 “(B) the quantity of the ingredients, con-  
7 stituents, substances, and compounds that are  
8 listed under subparagraph (A) in each brand or  
9 variety of tobacco product;

10 “(C) the nicotine content of the product,  
11 measured in milligrams of nicotine;

12 “(D) for each brand or variety of ciga-  
13 rettes—

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

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

20 “(iii) the tar, nicotine, and carbon  
21 monoxide delivery level under Federal  
22 Trade Commission parameters and any  
23 other smoking conditions established by  
24 the Secretary, reported in milligrams of

1 tar, nicotine, and carbon monoxide per cig-  
2 arette;

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

5 “(i) the pH level of the tobacco;

6 “(ii) the moisture content of the to-  
7 bacco expressed as a percentage of the  
8 weight of the tobacco; and

9 “(iii) the nicotine content—

10 “(I) for each gram of the prod-  
11 uct, measured in milligrams of nico-  
12 tine;

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

15 “(III) with respect to unionized  
16 (free) nicotine, expressed as a percent-  
17 age per gram of the tobacco and ex-  
18 pressed in milligrams per gram of the  
19 tobacco; and

20 “(F) any other information determined ap-  
21 propriate by the Secretary.

22 “(3) METHODS.—The Secretary shall have the  
23 authority to promulgate regulations to establish the  
24 methods to be used by manufacturers in making the  
25 determinations required under paragraph (2).

1       “(b) SAFETY ASSESSMENTS.—

2               “(1) APPLICATION TO NEW INGREDIENTS.—

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

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

22                       “(C) DEFINITION OF NEW INGREDIENT.—  
23 For purposes of subparagraph (A), the term  
24 ‘new ingredient, constituent, substance, or  
25 compound’ means an ingredient, constituent

1 substance, or compound listed under subsection  
2 (a)(1) that was not used in the brand or variety  
3 of tobacco product involved prior to January 1,  
4 1998.

5 “(2) APPLICATION TO OTHER INGREDIENTS.—

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

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

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

1           “(B) demonstrate that there is a reason-  
2           able certainty among experts qualified by sci-  
3           entific training and experience who are con-  
4           sulted, that the ingredient, constituents, sub-  
5           stance, or compound will not present any risk  
6           to consumers or the public in the quantities  
7           used under the intended conditions of use.

8           “(c) PROHIBITION.—

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

15                 “(A) if no safety assessment has been sub-  
16                 mitted by the manufacturer for the ingredient,  
17                 constituent, substance, or compound as other-  
18                 wise required under this section; or

19                 “(B) if the Secretary finds that the manu-  
20                 facturer has failed to demonstrate the safety of  
21                 the ingredient, constituent, substance, or  
22                 compound that was the subject of the assess-  
23                 ment under paragraph (2).

24           “(2) REVIEW OF ASSESSMENTS.—

1           “(A) GENERAL REVIEW.—Not later than  
2           180 days after the receipt of a safety assess-  
3           ment under subsection (b), the Secretary shall  
4           review the findings contained in such assess-  
5           ment and approve or disapprove of the safety of  
6           the ingredient, constituents, substance, or  
7           compound that was the subject of the assess-  
8           ment. The Secretary may, for good cause, ex-  
9           tend the period for such review. The Secretary  
10          shall provide notice to the manufacturer of an  
11          action under this subparagraph.

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

22          “(d) RIGHT TO KNOW; FULL DISCLOSURE OF INGRE-  
23          DIENTS TO THE PUBLIC.—

24           “(1) IN GENERAL.—Except as provided in para-  
25          graph (3), a package of a tobacco product shall dis-



1 close all ingredients, constituents, substances, or  
2 compounds contained in the product in accordance  
3 with regulations promulgated under section 701(a)  
4 by the Secretary.

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

10 “(A) the percentage that is domestic to-  
11 bacco; and

12 “(B) the percentage that is foreign to-  
13 bacco.

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

22 **“SEC. 575. TOBACCO PRODUCT WARNINGS, LABELING AND**  
23 **PACKAGING.**

24 “(a) CIGARETTE WARNINGS.—

25 “(1) IN GENERAL.—

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

7           “WARNING: Cigarettes Are Addictive.

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

10          “WARNING: Cigarettes Cause Fatal Lung  
11 Disease.

12          “WARNING: Cigarettes Cause Cancer.

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

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

17          “WARNING: Smoking Can Kill You.

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

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

23          “(B) ADVERTISING.—It shall be unlawful  
24 for any manufacturer, importer, distributor or  
25 retailer of cigarettes to advertise or cause to be

1 advertised any cigarette unless the advertising  
2 bears, in accordance with the requirements of  
3 this subsection, one of the following labels:

4 "WARNING: Cigarettes Are Addictive.

5 "WARNING: Tobacco Smoke Can Harm  
6 Your Children.

7 "WARNING: Cigarettes Cause Fatal Lung  
8 Disease.

9 "WARNING: Cigarettes Cause Cancer.

10 "WARNING: Cigarettes Cause Strokes  
11 And Heart Disease.

12 "WARNING: Smoking During Pregnancy  
13 Can Harm Your Baby.

14 "WARNING: Smoking Can Kill You.

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

17 "WARNING: Quitting Smoking Now  
18 Greatly Reduces Serious Risks To Your  
19 Health.

20 "(C) ADDITIONAL WARNINGS.—Beginning  
21 on the date that is 18 months after the date of  
22 enactment of this subchapter, the Secretary  
23 may substitute for, or require warnings in addi-  
24 tion to, those otherwise required under subpara-  
25 graphs (A) and (B) if the Secretary determines

1 that such warnings would be more effective in  
2 deterring the use of cigarettes.

3 “(2) REQUIREMENTS FOR LABELING.—

4 “(A) LOCATION.—Each label statement re-  
5 quired by subparagraph (A) of paragraph (1)  
6 shall be located on the upper portion of the  
7 front and rear panels of the cigarette package  
8 (or carton) directly on the package underneath  
9 the cellophane or other clear wrapping and oc-  
10 cupy not less than 25 percent of such panels.

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

1           “(C) EXCEPTION.—With respect to ciga-  
2           rettes manufactured and distributed prior to  
3           January 1, 2000, the provisions of subpara-  
4           graph (A) shall not apply with respect to the  
5           front panel in the case of a flip-top cigarette  
6           package (offered for sale on June 1, 1997)  
7           where the front portion of the flip-top does not  
8           comprise at least 25 percent of the front panel.  
9           In the case of such a package, the label state-  
10          ment required by subparagraph (A) of para-  
11          graph (1) shall occupy the entire front portion  
12          of the flip-top.

13          “(3) REQUIREMENTS FOR ADVERTISING.—

14                 “(A) LOCATION.—Each label statement re-  
15                 quired by subparagraph (B) of paragraph (1)  
16                 shall appear in a conspicuous and prominent  
17                 format and location at the top of each adver-  
18                 tisement within the trim area and shall occupy  
19                 not less than 20 percent of the area of the ad-  
20                 vertisement involved.

21                 “(B) TYPE, COLOR AND FORMAT.—

22                         “(i) TYPE.—With respect to each  
23                         label statement required by subparagraph  
24                         (B) of paragraph (1), the phrase ‘WARN-  
25                         ING’ shall appear in capital letters and the

1 label statement shall be printed in the fol-  
2 lowing types:

3 “(I) With respect to whole page  
4 advertisements on broadsheet news-  
5 paper—45 point type.

6 “(II) With respect to half page  
7 advertisements on broadsheet news-  
8 paper—39 point type.

9 “(III) With respect to whole page  
10 advertisements on tabloid news-  
11 paper—39 point type.

12 “(IV) With respect to half page  
13 advertisements on tabloid news-  
14 paper—27 point type.

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

17 “(VI) With respect to whole page  
18 magazine advertisements—31.5 point  
19 type.

20 “(VII) With respect to 28cm x 3  
21 column advertisements—22.5 point  
22 type.

23 “(VIII) With respect to 20cm x 2  
24 column advertisements—15 point  
25 type.

1           Within the 20 percent requirement de-  
2           scribed in subparagraph (A), the Secretary  
3           may revise the required type sizes if the  
4           Secretary determines that such revisions  
5           will enhance public health protections.

6           “(ii) COLOR.—All the letters in the  
7           label under this subparagraph shall appear  
8           in conspicuous and legible type, in contrast  
9           by typography, layout, or color with all  
10          other printed material on the package, and  
11          be printed in an alternating black-on-white  
12          and white-on-black format as determined  
13          appropriate by the Secretary.

14          “(iii) FORMAT.—The label statements  
15          under subparagraph (B) of paragraph (1)  
16          shall be black when the background is  
17          white and white when the background is  
18          black, and shall be in the point size re-  
19          quired under this subparagraph. The label  
20          statements shall be enclosed by a rectangu-  
21          lar border that is the same color as the let-  
22          ters of the statements and that is the  
23          width of the first down stroke of the cap-  
24          ital ‘W’ of the word ‘WARNING’ in the  
25          label statements.

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

4           “(i) in the case of an advertisement  
5 that appears in a newspaper, magazine, pe-  
6 riodical or other publication that is not in  
7 English, such statements shall appear in  
8 the predominant language of the publica-  
9 tion; or

10           “(ii) in the case of any other adver-  
11 tisement that is not in English, such state-  
12 ments shall appear in the same language  
13 as that principally used in the advertise-  
14 ment.

15           “(4) ROTATION OF LABEL STATEMENTS.—

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



1           “(B) ADVERTISING.—The label statements  
2 specified in subparagraph (B) of paragraph (1)  
3 shall be rotated quarterly in alternating se-  
4 quence in advertisements for each such brand  
5 of cigarettes in accordance with a plan submit-  
6 ted by the manufacturer, importer, distributor  
7 or retailer and approved by the Secretary.

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

19           “(b) SMOKELESS TOBACCO PRODUCTS.—

20           “(1) IN GENERAL.—

21           “(A) PACKAGING.—It shall be unlawful for  
22 any person to manufacture, package, or import  
23 for sale or distribution any smokeless tobacco  
24 product the package of which fails to bear, in

1 accordance with the requirements of this sub-  
2 section, one of the following labels:

3 “WARNING: This Product Can Cause  
4 Mouth Cancer.

5 “WARNING: This Product Can Kill You.

6 “WARNING: This Product Can Cause  
7 Gum Disease And Tooth Loss.

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

10 “WARNING: This Product Contains Can-  
11 cer-Causing Chemicals.

12 “WARNING: Smokeless Tobacco Is Ad-  
13 dictive.

14 “(B) ADVERTISING.—It shall be unlawful  
15 for any manufacturer, importer, distributor or  
16 retailer of smokeless tobacco products to adver-  
17 tise or cause to be advertised any smokeless to-  
18 bacco product unless the advertising bears, in  
19 accordance with the requirements of this sub-  
20 section, one of the following labels:

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

23 “WARNING: This Product Can Kill You.

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

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

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

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

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

15          “(2) REQUIREMENTS FOR LABELING.—

16                 “(A) LOCATION.—Each label statement re-  
17                 quired by subparagraph (A) of paragraph (1)  
18                 shall be located on the 2 most prominent dis-  
19                 play panels of the product and occupy not less  
20                 than 25 percent of such panels.

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

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

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

15 “(c) OTHER TOBACCO PRODUCTS.—The Secretary  
16 may prescribe such regulations as may be necessary to es-  
17 tablish warning labels for other tobacco product packag-  
18 ing, labeling and advertising.

19 “(d) CONSTRUCTION.—

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

1 order to make such statements or labels larger, more  
2 prominent, more conspicuous, or more effective.

3 “(2) UNFAIR ACTS.—Nothing in this section  
4 (other than the requirements of subsections (a), (b)  
5 and (c)) shall be construed to limit or restrict the  
6 authority of the Federal Trade Commission with re-  
7 spect to unfair or deceptive acts or practices in the  
8 advertising of cigarettes or smokeless tobacco prod-  
9 ucts.

10 “(e) LIMITED PREEMPTION.—

11 “(1) STATE AND LOCAL ACTION.—No warning  
12 label with respect to cigarettes or smokeless tobacco  
13 products, or any other tobacco product for which  
14 warning labels have been required under this section,  
15 other than the warning labels required under this  
16 Act, shall be required by any State or local statute  
17 or regulation to be included on any package of ciga-  
18 rettes or a smokeless tobacco product.

19 “(2) EFFECT ON LIABILITY LAW.—Nothing in  
20 this section shall relieve any person from liability at  
21 common law or under State statutory law to any  
22 other person.

23 “(f) ELECTRONIC MEDIUM ADVERTISING.—It shall  
24 be unlawful to advertise tobacco products on any medium

1 of electronic communications subject to the jurisdiction of  
2 the Federal Communications Commission.

3 **“SEC. 576. PRESERVATION OF STATE AND LOCAL AUTHOR-**  
4 **ITY.**

5 “Except as otherwise provided for in section 575(e),  
6 nothing in this subchapter shall be construed as prohibit-  
7 ing a State or locality from imposing requirements, prohi-  
8 bitions, penalties or other measures to further the pur-  
9 poses of this subchapter that are in addition to the re-  
10 quirements, prohibitions, or penalties required under this  
11 subchapter. State and local governments may impose addi-  
12 tional tobacco product control measures to further restrict  
13 or limit the use of such products.

14 **“SEC. 577. RESTRICTIONS ON YOUTH ACCESS TO TOBACCO**  
15 **PRODUCTS.**

16 “(a) **IN GENERAL.**—The Secretary shall restrict the  
17 access of minors to tobacco products.

18 “(b) **STATE LICENSING.**—

19 “(1) **IN GENERAL.**—Except as provided in para-  
20 graph (2), in order to receive any amounts under  
21 section 111 of the Healthy Kids Act, a State shall  
22 have in place a program that meets or exceeds (as  
23 determined by the Secretary) the requirements of  
24 the model State program described in paragraph (3)  
25 under which a retailer would be required to obtain

1 a State or local license to sell or otherwise distribute  
2 tobacco products directly to consumers in such  
3 State.

4 “(2) START-UP PERIOD.—

5 “(A) IN GENERAL.—The Secretary may  
6 waive the requirement of paragraph (1) for  
7 such time as the Secretary determines is nec-  
8 essary, after promulgation of the model pro-  
9 gram described in paragraph (3), to permit the  
10 legislature of a State to meet and enact laws to  
11 comply with paragraph (1) and to permit the  
12 State to implement the program described in  
13 paragraph (1).

14 “(B) ELIGIBILITY.—To be eligible for a  
15 waiver under subparagraph (A), the Governor  
16 of the State involved shall certify to the Sec-  
17 retary in writing that the State intends to im-  
18 plement a program that meets the requirements  
19 of this section at the earliest possible oppor-  
20 tunity. If, subsequent to such notification, the  
21 Secretary determines that the State has failed  
22 to implement such a program, the Secretary  
23 may recover any funds distributed to the State  
24 under section 111 of the Healthy Kids Act.

1           “(3) MODEL PROGRAM.—Not later than 12  
2 months after the date of enactment of this sub-  
3 chapter, the Secretary shall promulgate a model  
4 State program. Such model State program shall at  
5 a minimum—

6           “(A) provide for the collection of licensing  
7 fees by the State or locality to defray the costs  
8 of administering the program;

9           “(B) prohibit retailers from selling or oth-  
10 erwise distributing tobacco products directly to  
11 consumers in a State unless such retailers have  
12 in effect tobacco licenses issued or renewed in  
13 accordance with State or local laws;

14           “(C) provide for the notification of every  
15 person in the State who is engaged in the dis-  
16 tribution at retail of tobacco products of the li-  
17 cense requirement and of the date by which  
18 such person shall have obtained a license in  
19 order to continue to distribute such products;

20           “(D) prohibit licensed retailers from selling  
21 or otherwise distributing tobacco products to  
22 minors;

23           “(E) provide for penalties of up to \$50,000  
24 for each violation of the requirements under  
25 such program relating to the sale or distribu-





1                   “(C) \$150 for the 3rd and subsequent vio-  
2                   lations.

3                   “(2) MINORS.—In the case of a minor who pur-  
4                   chases or attempts to purchase a tobacco product in  
5                   violation of subsection (a) (other than a minor en-  
6                   gaged in an authorized sting or a law enforcement  
7                   operation), the regulations may provide for civil  
8                   money penalties, loss of driving privileges, or other  
9                   penalties.

10                  “(3) RETAILERS.—In the case of a retailer who  
11                  distributes a tobacco product to a minor in violation  
12                  of subsection (a), the regulations shall provide for  
13                  the application of a civil money penalty of at least—

14                         “(A) \$250 for the 1st violation;

15                         “(B) \$500 for the 2nd violation;

16                         “(C) \$1,500 for the 3rd violation;

17                         “(D) \$5,000 for the 4th violation; and

18                         “(E) \$10,000 for the 5th and subsequent  
19                   violations.

20                  “(d) ENFORCEMENT.—

21                         “(1) IN GENERAL.—The Secretary may enter  
22                   into agreements with, and provide grants to, States  
23                   to enforce this section. Any State that elects to en-  
24                   force the provisions of this section within the State  
25                   shall conduct sting operations and other compliance

1 checks and enforce State laws under this section  
2 through the use of penalties described in subsection  
3 (c) so as to ensure that minors are successful in pur-  
4 chasing tobacco products less than 5 percent of the  
5 time.

6 “(2) REQUIREMENTS.—The Secretary may by  
7 regulation implement such requirements as the Sec-  
8 retary determines necessary to ensure that any com-  
9 pliance checks performed by the State under para-  
10 graph (1) are accurate.

11 “(3) VIOLATIONS.—If the Secretary determines  
12 that the provisions of subsection (a) are being vio-  
13 lated within a State, the Secretary shall have the au-  
14 thority to enforce such provisions in the State.

15 “(e) STATE COMPLIANCE.—Beginning with the 3rd  
16 full calendar year following the date of enactment of this  
17 subchapter, if, with respect to a State, the Secretary deter-  
18 mines that minors are successful in purchasing tobacco  
19 products more than 5 percent of the time, the Secretary  
20 shall notify the State and reduce payments to the State  
21 under section 111 of the Healthy Kids Act by 1 percent  
22 for each percentage point by which the State is not in com-  
23 pliance with this subsection.

24 “(f) PREEMPTION.—The provisions of this section  
25 shall not preempt any provision of State or local law that

1 provides greater restrictions than those required in this  
2 section.

3 “(g) FEDERAL LICENSING OF ENTITIES.—

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

10 “(A) on any military installation (as de-  
11 fined in section 2801(c)(2) of title X, United  
12 States Code);

13 “(B) in any United States embassy;

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

17 “(D) in any duty-free shop located within  
18 the United States; or

19 “(E) through any other Federal entity or  
20 on any other Federal property as determined  
21 appropriate by the Secretary.

22 “(2) REQUIREMENTS.—The program estab-  
23 lished under paragraph (1) shall apply requirements  
24 (including those for penalties, suspensions, and rev-

1       ocations) similar to those required to be imple-  
2       mented by States under this section.

3           “(3) INDIAN TRIBES AND TRIBAL LANDS.—For  
4       purposes of applying and enforcing the provisions of  
5       this section to entities that sell or otherwise distrib-  
6       ute tobacco products on Indian reservations (as de-  
7       fined in section 403(9) of the Indian Child Protec-  
8       tion and Family Violence Prevention Act (25 U.S.C.  
9       3202(9))), an Indian tribe or tribal organization (as  
10      such terms are defined in section 4 of the Indian  
11      Self Determination and Education Assistance Act  
12      (25 U.S.C. 450b)) shall be treated as a State.

13   **“SEC. 578. PUBLIC DISCLOSURE OF HEALTH RESEARCH.**

14      “(a) SUBMISSION BY MANUFACTURERS.—Not later  
15      than 3 months after the date of the enactment of this sub-  
16      chapter and thereafter as required by the Secretary, each  
17      manufacturer of a tobacco product shall submit to the Sec-  
18      retary a copy of each document in the manufacturer’s pos-  
19      session—

20           “(1) relating, referring, or pertaining to—

21                   “(A) any health effects in humans or ani-  
22                   mals, including addiction, caused by the use of  
23                   tobacco products or components of tobacco  
24                   products;

1           “(B) the engineering, manipulation or con-  
2           trol of nicotine in tobacco products:

3           “(C) the sale or marketing of tobacco  
4           products:

5           “(D) any research involving safer tobacco  
6           products; or

7           “(E) such other matters as the Secretary  
8           may prescribe; or

9           “(2) produced, or ordered to be produced, by  
10          the tobacco product manufacturer in any health-re-  
11          lated civil or criminal proceeding, judicial or admin-  
12          istrative, that has been commenced by the United  
13          States, an agency of the United States, a State or  
14          local governmental entity, or any person, or on be-  
15          half of such an entity or person, including attorney-  
16          client and other documents produced or ordered to  
17          be produced for in camera inspection.

18          “(b) **ADDITIONAL INFORMATION.**—For the purpose  
19          of obtaining additional information relating to the matters  
20          in subsection (a), the Secretary may hold hearings, require  
21          testimony, the deposition of witnesses, the answering of  
22          interrogatories, or enter into and inspect facilities.

23          “(c) **DISCLOSURE BY THE SECRETARY.**—Starting not  
24          later than 6 months after the date of the enactment of  
25          this subchapter, the Secretary shall begin to make avail-

1 able to the public, using the Internet and other means.  
2 the documents submitted under subsection (a).

3 “(d) PROTECTION OF CERTAIN INFORMATION.—The  
4 Secretary shall not disclose information obtained under  
5 this section if such information is entitled to protection  
6 as a trade secret or under the attorney-client privilege un-  
7 less the Secretary determines that the disclosure of such  
8 information is necessary to promote the public health.

9 “(e) ENFORCEMENT.—Notwithstanding any other  
10 provision of law, manufacturers of tobacco products shall  
11 provide any deposition, documents, or other information,  
12 answer any interrogatories, and allow any entry or inspec-  
13 tion required pursuant to this section.

14 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
15 tion shall be construed to interfere in any way with the  
16 discovery rights of courts or parties in civil or criminal  
17 proceedings, administrative or judicial, involving tobacco  
18 products, or the right of access to such documents under  
19 any other provision of law.

20 “(g) DEFINITION.—In this section:

21 “(1) DOCUMENTS.—The term ‘documents’ in-  
22 cludes originals and drafts of any kind of written or  
23 graphic matter, regardless of the manner of produc-  
24 tion or reproduction, of any kind of description,  
25 whether sent or received or neither, and all copies

1       thereof that are different in any way from the origi-  
2       nal (whether by interlineation, receipt stamp, nota-  
3       tion, indication of copies sent or received or other-  
4       wise) regardless of whether 'confidential', 'privi-  
5       leged', or otherwise, including any paper, book, ac-  
6       count, photograph, blueprint, drawing, agreement,  
7       contract, memorandum, advertising material, letter,  
8       telegram, object, report, record, transcript, study,  
9       note, notation, working paper, intra-office commu-  
10      nication, intra-department communication, inter-  
11      department communication, chart, minute, index  
12      sheet, routing sheet, computer software, computer  
13      data, delivery ticket, flow sheet, price list, quotation,  
14      bulletin, circular, manual, summary, recording of  
15      telephone or other conversation or of interviews, or  
16      of conferences, or any other written, recorded, tran-  
17      scribed, punched, taped, filmed, or graphic matter,  
18      regardless of the manner produced or reproduced.  
19      Such term shall also include any tape, recording,  
20      videotape, computerization, or other electronic re-  
21      cording, whether digital or analog or a combination  
22      of the two.

23      “(2) MANUFACTURER OF A TOBACCO PROD-  
24      UCT.—The term ‘manufacturer of a tobacco product’  
25      also includes the Tobacco Institute, the Council for



1 Tobacco Research, the Smokeless Tobacco Council,  
2 the Center for Indoor Air Research, or any other  
3 trade association or entity that is primarily funded  
4 by persons who manufacture a tobacco product.

5 **"SEC. 579. CITIZEN SUITS.**

6 "(a) **AUTHORITY.**—Any individual on his or her own  
7 behalf may commence a civil action—

8 "(1) against any person who is alleged to be in  
9 violation of this subchapter, in the district court for  
10 the district in which the alleged violation occurred or  
11 in which the defendant resides or is found; or

12 "(2) against the Secretary or the Commissioner  
13 where there is alleged a failure of the Secretary or  
14 Commissioner to perform any act or duty required  
15 under this subchapter, in a district court for the dis-  
16 trict in which an alleged failure to perform occurred  
17 or in the district court of the District of Columbia.

18 "(b) **JURISDICTION.**—The district courts of the Unit-  
19 ed States shall have jurisdiction, without regard to the  
20 amount in controversy or the citizenship of the parties,  
21 to enforce the provisions of this subchapter, or to order  
22 the Secretary to perform such act or duty, as the case  
23 may be, and to apply any appropriate civil penalties. The  
24 district courts of the United States shall have jurisdiction  
25 to compel action by an agency where such action is found

1 to be unreasonably delayed, except that such an action  
2 may not be maintained unless the plaintiff has provided  
3 the Secretary with a notice of the intent of the plaintiff  
4 to file such action at least 90 days prior to the filing of  
5 such action.

6       “(c) COSTS AND DAMAGES.—A court under sub-  
7 section (b) may award costs of litigation, including reason-  
8 able attorney’s fees, to any party where the court deter-  
9 mines that such an award is appropriate. No damages of  
10 any kind, whether compensatory or punitive, may be  
11 awarded to the individual in actions described in sub-  
12 section (a)(2). Any damages awarded to the Federal Gov-  
13 ernment shall be paid to the Treasury.

14 **“SEC. 580. AGRICULTURAL PRODUCERS.**

15       “The Secretary may not promulgate any regulation  
16 under this subchapter that has the effect of placing regu-  
17 latory burdens on tobacco producers (as such term is used  
18 for purposes of the Agricultural Adjustment Act of 1938  
19 (7 U.S.C. 1281 et seq.) and the Agricultural Act of 1949  
20 (7 U.S.C. 1441 et seq.)) in excess of the regulatory bur-  
21 dens generally placed on other agricultural commodity  
22 producers. This section shall not be construed to limit the  
23 regulatory requirements that may be imposed on produc-  
24 ers who are also manufacturers under this Act.

1 **"SEC. 581. AUTHORITY OF SECRETARY.**

2        To carry out this subchapter, the Secretary may  
3 hold hearings, administer oaths, issue subpoenas, require  
4 the testimony or deposition of witnesses, the production  
5 of documents, or the answering of interrogatories, or,  
6 upon presentation of the proper credentials, enter and in-  
7 spect facilities. In the case of a refusal of a person to obey  
8 a subpoena, any district court of the United States for  
9 the district in which such person is found, resides or con-  
10 ducts business, upon application by the Commissioner,  
11 shall have jurisdiction to issue an order requiring such  
12 person to appear and give testimony or to appear and  
13 produce evidence or both. The failure to obey such an  
14 order of the court may be punished by the court as con-  
15 tempt thereof, and by penalties of up to \$25,000 per  
16 day."

17 **SEC. 206. REPEALS.**

18        The following provisions of law shall be repealed:

19            (1) The Federal Cigarette Labeling and Adver-  
20        tising Act (15 U.S.C. 1331 et seq.).

21            (2) The Comprehensive Smokeless Tobacco  
22        Health Education Act of 1986 (15 U.S.C. 4401 et  
23        seq.).

24 **SEC. 207. AUTHORITY OF FEDERAL TRADE COMMISSION.**

25        Nothing in this title, or an amendment made by this  
26 title, shall be construed to in any way reduce the jurisdic-

- 1 tion of the Federal Trade Commission over the advertising
- 2 of tobacco products.

1 **TITLE III—YOUTH SMOKING RE-**  
2 **DUCTION TARGETS AND IN-**  
3 **CENTIVES TO REDUCE YOUTH**  
4 **SMOKING RATES**

5 **SEC. 301. PURPOSE.**

6 It is the purpose of this title to encourage the achieve-  
7 ment of reductions in the proportion of underage consum-  
8 ers of tobacco products through the imposition of addi-  
9 tional financial deterrents relating to tobacco products if  
10 certain underage tobacco-use reduction targets are not  
11 met.

12 **SEC. 302. CHILD TOBACCO USE SURVEYS.**

13 (a) **ANNUAL PERFORMANCE SURVEY.**—Not later  
14 than 1 year after the date of the enactment of this Act  
15 and annually thereafter the Secretary shall conduct a sur-  
16 vey to determine, in accordance with subsection (b)—

17 (1) the percentage of all individuals under 18  
18 years of age who used a tobacco product within the  
19 past 30 days; and

20 (2) the percentage of all individuals under 18  
21 years of age who identify each brand of tobacco  
22 product as the usual brand smoked or used within  
23 the past 30 days.

24 (b) **EXCLUSION OF CERTAIN AGES.**—The Secretary  
25 shall exclude from the survey conducted under subsection

1 (a). children under the age of 12 years (or such other less-  
2 er age as the Secretary may establish to strengthen the  
3 validity of the survey).

4 (c) BASELINE LEVEL.—

5 (1) IN GENERAL.—The baseline level of the  
6 child tobacco product use (referred to in this title as  
7 the “baseline level”) is the percentage of individuals  
8 under 18 years of age determined to have used the  
9 tobacco product in the first annual performance sur-  
10 vey for 1999.

11 (2) MANUFACTURERS.—The baseline level of  
12 tobacco product use with respect to a manufacturer  
13 is the percentage of individuals under 18 years of  
14 age determined to have used any tobacco product of  
15 such manufacturer in the first annual performance  
16 survey for 1999.

17 (d) ADDITIONAL MEASURES.—In order to increase  
18 the understanding of youth tobacco product use, the Sec-  
19 retary may, for informational purposes only, add addi-  
20 tional measures to the survey under subsection (a), con-  
21 duct periodic or occasional surveys at other times, and  
22 conduct surveys of other populations such as young adults.  
23 The results of such surveys shall be made available to  
24 manufacturers and the public to assist in efforts to reduce  
25 youth tobacco use.

1 (c) ADMINISTRATION.—

2 (1) RESULTS.—The Secretary shall establish a  
3 scientific advisory board to ensure that surveys con-  
4 ducted under this section produce results that are  
5 reasonably precise and valid.

6 (2) TECHNICAL ADJUSTMENTS.—The Secretary  
7 may make technical changes in the manner in which  
8 the surveys are conducted so long as adjustments  
9 are made to ensure that the results of the surveys  
10 are comparable from year to year.

11 (3) PARTICIPATION IN SURVEY.—Notwithstand-  
12 ing any other provision of law, the Secretary may  
13 conduct a survey involving minors if the results of  
14 such survey with respect to such minors are kept  
15 confidential and not disclosed.

16 **SEC. 303. REDUCTION IN UNDERAGE TOBACCO PRODUCT**  
17 **USAGE.**

18 (a) ANNUAL DETERMINATION.—The Secretary shall  
19 annually determine, based on the annual performance sur-  
20 veys under section 302, whether the required percentage  
21 reduction (as described in subsection (b)) in the underage  
22 use of tobacco products for a year has been achieved for  
23 the year involved. Such determination shall be based on—

24 (1) with respect to cigarette products, the aver-  
25 age annual percentage prevalence of the use of to-

1       bacco products by individuals who are under 18  
2       years of age (as determined under section 302(a))  
3       for the year involved as compared to the baseline  
4       level for cigarette products (as determined under  
5       section 302(e)); and

6               (2) with respect to smokeless tobacco products,  
7       the average annual percentage prevalence of the use  
8       of smokeless tobacco products by individuals who are  
9       under 18 years of age (as determined under section  
10       302(a)) for the year involved as compared to the  
11       baseline level for smokeless tobacco products (as de-  
12       termined under section 302(e)).

13       (b) **PERCENTAGE REDUCTION IN UNDERAGE USE OF**  
14 **TOBACCO PRODUCTS.**—For purposes of this section, the  
15 required percentage reduction from the baseline level in  
16 the percentage underage use of tobacco products with re-  
17 spect to each tobacco product shall be as follows:

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

19                       (A) the percentage reduction in the per-  
20                       centage use of cigarettes shall be at least 20  
21                       percent for each of the calendar years 2001 and  
22                       2002;

23                       (B) the percentage reduction in the per-  
24                       centage use of cigarettes shall be at least 40



1 percent for each of the calendar years 2003 and  
2 2004;

3 (C) the percentage reduction in the per-  
4 centage use of cigarettes shall be at least 55  
5 percent for each of the calendar years 2005  
6 through 2007; and

7 (D) the percentage reduction in the per-  
8 centage use of cigarettes shall be at least 67  
9 percent for calendar year 2008 and each subse-  
10 quent calendar year.

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

13 (A) the percentage reduction in the per-  
14 centage use of smokeless tobacco products shall  
15 be at least 15 percent for each of the calendar  
16 years 2001 and 2002;

17 (B) the percentage reduction in the per-  
18 centage use of smokeless tobacco products shall  
19 be at least 25 percent for each of the calendar  
20 years 2003 and 2004;

21 (C) the percentage reduction in the per-  
22 centage use of smokeless tobacco products shall  
23 be at least 35 percent for each of the calendar  
24 years 2005 and 2007; and

1           (D) the percentage reduction in the per-  
2           centage use of smokeless tobacco products shall  
3           be at least 45 percent for calendar year 2008  
4           and each subsequent calendar year.

5           (c) APPLICATION TO MANUFACTURER.—With respect  
6           to the average annual percentage prevalence of the use  
7           of each manufacturer's brands of tobacco product by indi-  
8           viduals who are under 18 years of age, as determined on  
9           the basis of the annual performance survey conducted  
10          under section 302(a), each manufacturer which manufac-  
11          tured a brand or brands of tobacco product on or before  
12          the date of the enactment of this Act shall reduce the per-  
13          centage of children who use such manufacturer's brand  
14          or brands in accordance with the percentage reductions  
15          required under subsection (b).

16          (d) REPORT.—Not later than December 31, 2005,  
17          the Secretary shall prepare and submit to the appropriate  
18          committees of Congress a report concerning the progress  
19          made in achieving percentage reductions in the use of to-  
20          bacco products together with the recommendations, if any,  
21          of the Secretary for stronger reductions in calendar years  
22          after 2008.

23          **SEC. 304. NONCOMPLIANCE.**

24          (a) INDUSTRY-WIDE PENALTY.—If, with respect to  
25          a year, the Secretary determines under section 303(a) that

1 the required percentage reduction for either cigarettes or  
2 smokeless tobacco products has not been achieved as re-  
3 quired under section 303(b), the Secretary shall impose  
4 an industry-wide penalty on the manufacturers of such  
5 product in an amount that is equal to \$.10 cents for each  
6 unit of the tobacco product involved that is manufactured  
7 and distributed for consumer use in the year following the  
8 year in which the noncompliance occurs.

9 (b) MANUFACTURER-SPECIFIC PENALTY.—

10 (1) IN GENERAL.—With respect to each manu-  
11 facturer for a year, if the Secretary determines  
12 under section 303(a) that the required percentage  
13 reduction for either cigarettes or smokeless tobacco  
14 products have not been achieved by such manufac-  
15 turer as required under section 303(b), the Sec-  
16 retary shall impose a penalty on such manufacturer  
17 in an amount equal to

18 (A) \$.10 cents if the noncompliance factor  
19 exceeds 0 but does not exceed 10;

20 (B) \$.20 cents if the noncompliance factor  
21 exceeds 10 but does not exceed 15;

22 (C) \$.30 cents if the noncompliance factor  
23 exceeds 15 but does not exceed 20; and

24 (D) \$.40 cents if the noncompliance factor  
25 exceeds 20;

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1 for each unit of a tobacco product that is manufac-  
2 tured and distributed for consumer use by such  
3 manufacturer in the year following the year for  
4 which the determination is made.

5 (2) NONCOMPLIANCE FACTOR.—The noncompli-  
6 ance factor of a manufacturer for a year shall be  
7 equal to the percentage reduction required under  
8 section 303(b) for the year less the actual percent-  
9 age reduction for the year (as determined under  
10 paragraph (3)).

11 (3) ACTUAL PERCENTAGE REDUCTION.—The  
12 actual percentage reduction of a manufacturer shall  
13 be equal to 1 less the ratio of—

14 (A) the percentage of individuals under 18  
15 years of age who have been determined to use  
16 the manufacturer's products (as determined  
17 under section 302(a)) for the year involved; and

18 (B) the baseline level for the manufacturer  
19 (as determined under section 302(c));  
20 multiplied by 100.

21 (c) DE MINIMIS RULES.—

22 (1) EXEMPTION.—The Secretary shall not im-  
23 pose a penalty on a manufacturer under subsection  
24 (b) if the Secretary determines that the tobacco  
25 products manufactured by such manufacturer are

1 used by less than 0.5 percent of the total number of  
2 children determined to have used such tobacco prod-  
3 ucts for the year involved.

4 (2) PENALTY.—If the Secretary determines  
5 that—

6 (A) either—

7 (i) the tobacco products manufactured  
8 by a manufacturer under the baseline sur-  
9 vey conducted under section 302(c), are  
10 used by less than 0.5 percent of the total  
11 number of children determined to have  
12 used such tobacco products for the year in-  
13 volved; or

14 (ii) the manufacturer was not manu-  
15 facturing tobacco products in the year the  
16 baseline survey was conducted; and

17 (B) under an annual survey conducted  
18 under section 302(a) for the year involved, the  
19 tobacco products manufactured by such manu-  
20 facturer are used by more than 0.5 percent of  
21 the total number of children determined to have  
22 used such tobacco products for the year in-  
23 volved;

24 the Secretary shall impose a penalty on such manu-  
25 facturer in an amount equal to \$.40 cents for each

1 unit of the tobacco product involved that is manufac-  
2 tured and distributed for consumer use in the year  
3 following the year for which the determination is  
4 made.

5 (d) NONCOMPLIANCE FEES FOR CONSECUTIVE VIO-  
6 LATIONS.—

7 (1) IN GENERAL.—If a manufacturer of a to-  
8 bacco product, the cigarette industry, or the smoke-  
9 less tobacco industry fails to comply with the reduc-  
10 tions required under this title in 3 or 4 consecutive  
11 years, the noncompliance fee that is required to be  
12 paid by the manufacturer, cigarette industry, or  
13 smokeless tobacco industry, whichever is applicable,  
14 under this section for each unit of tobacco products  
15 manufactured by such manufacturer or industry  
16 which is distributed for consumer use in the year fol-  
17 lowing the year in which the noncompliance occurs,  
18 shall be the amount determined under subsection (b)  
19 for the year multiplied by 2.

20 (2) ADDITIONAL NONCOMPLIANCE.—If a manu-  
21 facturer or industry described in paragraph (1) fails  
22 to comply with the reductions required under this  
23 title—

24 (A) in 5 or 6 consecutive years, the non-  
25 compliance fee described in such paragraph

1 shall be the amount determined under sub-  
2 section (b) for the year multiplied by 3; and

3 (B) .in 7 or more consecutive years, the  
4 noncompliance fee described in such paragraph  
5 shall be the amount determined under sub-  
6 section (b) for the year multiplied by 4.

7 (e) PROHIBITION ON SINGLE-PACK SALES IN CASES  
8 OF REPEATED NONCOMPLIANCE.—Not later than 2 years  
9 after the date of enactment of this Act, the Secretary shall  
10 establish regulations to prohibit the sale of single packs  
11 of a manufacturer's tobacco products in cases of repeated  
12 noncompliance with the reductions required under section  
13 303(b). Such regulations shall require that, if a manufac-  
14 turer fails to comply with such reductions in 4 or more  
15 consecutive years, the manufacturer's tobacco products  
16 may be sold in the following year only in packages contain-  
17 ing not less than 10 units of the product per package (200  
18 cigarettes per package in the case of cigarettes, and a cor-  
19 responding package size for other tobacco products).

20 (f) REQUIRED GENERIC PACKAGING IN SEVERE  
21 CASES OF REPEATED NONCOMPLIANCE.—Not later than  
22 2 years after the date of enactment of this Act, the Sec-  
23 retary shall establish regulations to require units and  
24 packages of a manufacturer's tobacco products to have ge-  
25 neric packaging in severe cases of repeated noncompliance

1 with the reductions required under section 303(b). Such  
2 regulations shall require that, if a manufacturer fails to  
3 comply with such reductions in 6 or more consecutive  
4 years, the manufacturer's tobacco products may be sold  
5 in the following year only in units and packages whose  
6 packaging contains no external images, logos, or text  
7 (other than any required labels), except that the brand  
8 name and the identifier 'tobacco' may appear on the pack-  
9 aging in block lettering in black type on a white back-  
10 ground.

11 (g) PAYMENT.—The penalty to be paid by a manufac-  
12 turer under this section shall be paid on a quarterly basis,  
13 with payments due not later than 30 days after the end  
14 of each calendar quarter.

15 (h) PROCEDURES.—In assessing penalties under this  
16 section, the Secretary shall have in place procedures to  
17 take into account the effect that the margin of error of  
18 the annual survey may have on the amounts of penalties  
19 assessed to manufacturers.

20 (i) OTHER PRODUCTS.—The Secretary may promul-  
21 gate regulations requiring reductions in the use of other  
22 tobacco products by individuals under 18 years of age.  
23 Such regulations shall contain provisions for the applica-  
24 tion of monetary penalties for the failure of manufacturers  
25 to achieve such reductions.



1 **SEC. 305. RULEMAKING PROCEDURES.**

2 (a) **DOCKET.**—Not later than the date of the proposal  
3 of any regulation under this title, the Secretary shall es-  
4 tablish a rulemaking docket for action on such regulation  
5 (referred to in this section as a “rule”). Whenever a rule  
6 applies only within a particular State, a second (identical)  
7 docket shall be established in the appropriate regional of-  
8 fice of the Department of Health and Human Services.

9 (b) **PUBLICATION.**—In the case of any rule to which  
10 this section applies, notice of proposed rulemaking shall  
11 be published in the Federal Register, as provided under  
12 section 553(b) of title 5, United States Code, shall be ac-  
13 companied by a statement of its basis and purpose and  
14 shall specify the period available for public comment (here-  
15 inafter referred to as the “comment period”). The notice  
16 of proposed rulemaking shall also state the docket num-  
17 ber, the location or locations of the docket, and the times  
18 it will be open to public inspection. The statement of basis  
19 and purpose shall include a summary of—

20 (1) the factual data on which the proposed rule  
21 is based;

22 (2) the methodology used in obtaining the data  
23 and in analyzing the data; and

24 (3) the major legal interpretations and policy  
25 considerations underlying the proposed rule.

26 (c) **PUBLIC COMMENT.**—

1           (1) PUBLIC INSPECTION.—The rulemaking  
2 docket required under subsection (a) shall be open  
3 for inspection by the public at reasonable times spec-  
4 ified in the notice of proposed rulemaking. Any per-  
5 son may copy documents contained in the docket.  
6 The Secretary shall provide copying facilities which  
7 may be used at the expense of the person seeking  
8 copies, but the Secretary may waive or reduce such  
9 expenses in such instances as the public interest re-  
10 quires. Any person may request copies by mail if the  
11 person pays the expenses, including personnel costs  
12 to do the copying.

13           (2) COMMENTS AND OTHER MATERIAL IN  
14 DOCKET.—

15           (A) COMMENTS.—Promptly upon receipt  
16 by the Secretary, all written comments and doc-  
17 umentary information on the proposed rule re-  
18 ceived from any person for inclusion in the  
19 docket during the comment period shall be  
20 placed in the docket. The transcript of public  
21 hearings, if any, on the proposed rule shall also  
22 be included in the docket promptly upon receipt  
23 from the person who transcribed such hearings.  
24 All documents which become available after the  
25 proposed rule has been published and which the

1 Secretary determines are of central relevance to  
2 the rulemaking shall be placed in the docket as  
3 soon as possible after their availability.

4 (B) REQUIREMENT TO PLACE IN DOCK-  
5 ET.—The drafts of proposed rules submitted by  
6 the Secretary to the Office of Management and  
7 Budget for any interagency review process prior  
8 to the proposal of any such rule, all documents  
9 accompanying such drafts, and all written com-  
10 ments thereon by other agencies and all written  
11 responses to such written comments by the Sec-  
12 retary shall be placed in the docket no later  
13 than the date of proposal of the rule. The  
14 drafts of the final rule submitted for such re-  
15 view process prior to promulgation and all such  
16 written comments thereon, all documents ac-  
17 companying such drafts, and written responses  
18 thereto shall be placed in the docket no later  
19 than the date of promulgation.

20 (d) OPPORTUNITY FOR ORAL PRESENTATION.—In  
21 promulgating a rule to which this section applies—

22 (1) the Secretary shall allow any person to sub-  
23 mit written comments, data, or documentary infor-  
24 mation;

1           (2) the Secretary shall give interested persons  
2           an opportunity for the oral presentation of data,  
3           views, or arguments, in addition to an opportunity  
4           to make written submissions:

5           (3) a transcript shall be kept of any oral pres-  
6           entation; and

7           (4) the Secretary shall keep the record of such  
8           proceeding open for 30 days after completion of the  
9           proceeding to provide an opportunity for submission  
10          of rebuttal and supplementary information.

11          (e) MATERIAL TO ACCOMPANY RULE.—

12           (1) IN GENERAL.—The promulgated rule shall  
13          be accompanied by—

14           (A) a statement of basis and purpose like  
15           that referred to in subsection (b) with respect  
16           to a proposed rule; and

17           (B) an explanation of the reasons for any  
18           major changes in the promulgated rule from the  
19           proposed rule.

20           (2) RESPONSES.—The promulgated rule shall  
21          also be accompanied by a response to each of the  
22          significant comments, criticisms, and new data sub-  
23          mitted in written or oral presentations during the  
24          comment period.

1           (3) LIMITATION.—The promulgated rule may  
2 not be based (in part or whole) on any information  
3 or data which has not been placed in the docket as  
4 of the date of such promulgation.

5 (f) JUDICIAL REVIEW.—

6           (1) IN GENERAL.—The record for judicial re-  
7 view shall consist exclusively of the material referred  
8 to in subsection (b), subparagraph (A) of subsection  
9 (c)(2), and paragraphs (1) and (2) of subsection (e).

10           (2) LIMITATIONS.—Only an objection to a rule  
11 or procedure which was raised with reasonable speci-  
12 ficity during the period for public comment (includ-  
13 ing any public hearing) may be raised during judi-  
14 cial review. If the person raising an objection can  
15 demonstrate to the Secretary that it was impractica-  
16 ble to raise such objection within such time or if the  
17 grounds for such objection arose after the period for  
18 public comment (but within the time specified for ju-  
19 dicial review) and if such objection is of central rel-  
20 evance to the outcome of the rule, the Secretary  
21 shall convene a proceeding for reconsideration of the  
22 rule and provide the same procedural rights as  
23 would have been afforded had the information been  
24 available at the time the rule was proposed. If the  
25 Secretary refuses to convene such a proceeding, such

1 person may seek review of such refusal in the United  
2 States court of appeals for the appropriate circuit.  
3 Such reconsideration shall not postpone the effec-  
4 tiveness of the rule. The effectiveness of the rule  
5 may be stayed during such reconsideration, however,  
6 by the Secretary or the court for a period not to ex-  
7 ceed 3 months.

8 (g) JURISDICTION.—The sole forum for challenging  
9 procedural determinations made by the Secretary under  
10 this section shall be in the United States court of appeals  
11 for the appropriate circuit at the time of the substantive  
12 review of the rule. No interlocutory appeals shall be per-  
13 mitted with respect to such procedural determinations. In  
14 reviewing alleged procedural errors, the court may invali-  
15 date the rule only if the errors were so serious and related  
16 to matters of such central relevance to the rule that there  
17 is a substantial likelihood that the rule would have been  
18 significantly changed if such errors had not been made.

19 (h) REVERSAL OF SECRETARY'S ACTION.—In the  
20 case of review of any action of the Secretary to which this  
21 section applies, the court may reverse any such action  
22 found to be—

23 (1) arbitrary, capricious, an abuse of discretion,  
24 or otherwise not in accordance with law;

1           (2) contrary to constitutional right, power,  
2           privilege, or immunity;

3           (3) in excess of statutory jurisdiction, authority,  
4           or limitations, or short of statutory right; or

5           (4) without observance of procedure required by  
6           law, if—

7                   (A) such failure to observe such procedure  
8                   is arbitrary or capricious;

9                   (B) the requirement of subsection (f)(2)  
10                  has been met; and

11                  (C) the condition of the last sentence of  
12                  subsection (g) is met.

13           (i) **DEADLINES.**—Each statutory deadline for pro-  
14           mulgation of rules to which this section applies which re-  
15           quires promulgation less than 6 months after date of pro-  
16           posal may be extended to not more than 6 months after  
17           date of proposal by the Secretary upon a determination  
18           that such extension is necessary to afford the public, and  
19           the agency, adequate opportunity to carry out the pur-  
20           poses of this section.

21           (j) **EFFECTIVE DATE.**—The requirements of this sec-  
22           tion shall take effect with respect to any rule the proposal  
23           of which occurs after 90 days after the date of enactment  
24           of this Act.

1 (k) RULE OF CONSTRUCTION.—Nothing in this Act  
2 shall be construed to authorize judicial review of regula-  
3 tions or orders of the Secretary under this Act, except as  
4 otherwise provided for in this title.

5 (l) NO STAY.—In any action respecting the promul-  
6 gation of regulations under this title or the administration  
7 or enforcement of this title no court shall grant any stay,  
8 injunctive, or similar relief before final judgment by such  
9 court in such action.

10 (m) PUBLIC PARTICIPATION.—It is the intent of  
11 Congress that, consistent with the policy of the Adminis-  
12 trative Procedures Act, the Secretary in promulgating any  
13 regulation under this title, including a regulation subject  
14 to a deadline, shall ensure a reasonable period for public  
15 participation of at least 30 days, except as otherwise ex-  
16 pressly provided for.

17 **SEC. 306. MISCELLANEOUS PROVISIONS.**

18 (a) JUDICIAL REVIEW.—A manufacturer of tobacco  
19 products may seek judicial review of any action under this  
20 title only after a penalty has been assessed and paid by  
21 the manufacturer to the Department of the Treasury and  
22 only in the United States District Court for the District  
23 of Columbia. In an action by a manufacturer seeking judi-  
24 cial review of an annual performance survey, the manufac-  
25 turer may prevail—



1           (1) only if the manufacturer shows that the re-  
2           sults of the performance survey were arbitrary and  
3           capricious; and

4           (2) only to the extent that the manufacturer  
5           shows that it would have been required to pay a sub-  
6           stantially lesser penalty if the results of the perform-  
7           ance survey were not arbitrary and capricious.

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

12          (c) DEFINITIONS.—As used in this title:

13           (1) CHILD.—The term “child” means, except as  
14           provided in section 302(b), an individual who is  
15           under the age of 18.

16           (2) MANUFACTURER.—The term “manufac-  
17           turer” includes any person who imports a finished  
18           tobacco product.

1 **TITLE IV—TOBACCO TRANSI-**  
2 **TION ASSISTANCE TRUST**  
3 **FUND**

4 **SEC. 401. TOBACCO TRANSITION ASSISTANCE TRUST FUND.**

5 (a) **ESTABLISHMENT.**—There is established in the  
6 Treasury of the United States a trust fund to be known  
7 as the “Tobacco Transition Trust Fund”, consisting of  
8 such amounts as may be appropriated or credited to the  
9 Trust Fund.

10 (b) **TRANSFERS TO TRUST FUND.**—There are appro-  
11 priated and transferred to the Trust Fund for each fiscal  
12 year amounts made available to the Trust Fund as pro-  
13 vided for in section 101(d)(7).

14 (c) **REPAYABLE ADVANCES.**—

15 (1) **AUTHORIZATION.**—There are authorized to  
16 be appropriated to the Trust Fund, as repayable ad-  
17 vances, such sums as may from time to time be nec-  
18 essary to make expenditures under subsection (d).

19 (2) **REPAYMENT WITH INTEREST.**—Repayable  
20 advances made to the Trust Fund shall be repaid,  
21 and interest on the advances shall be paid, to the  
22 general fund of the Treasury when the Secretary of  
23 the Treasury determines that moneys are available  
24 in the Trust Fund to make the payments.

1           (3) RATE OF INTEREST.—Interest on an ad-  
2 vance made under this subsection shall be at a rate  
3 determined by the Secretary of Treasury (as of the  
4 close of the calendar month preceding the month in  
5 which the advance is made) that is equal to the cur-  
6 rent average market yield on outstanding marketable  
7 obligations of the United States with remaining pe-  
8 riod to maturity comparable to the anticipated pe-  
9 riod during which the advance will be outstanding.

10 (d) EXPENDITURES FROM TRUST FUND.—

11           (1) IN GENERAL.—Subject to paragraph (2),  
12 amounts in the Trust Fund shall be available for  
13 making expenditures to provide transition assistance  
14 to tobacco producers and tobacco-growing commu-  
15 nities to adjust to reduced demand for tobacco, in-  
16 cluding economic development assistance, assistance  
17 through retraining of tobacco producers and tobacco  
18 factory workers, or scholarships for tobacco produc-  
19 ers.

20           (2) IMPLEMENTATION.—Amounts in the Trust  
21 Fund shall be available for making expenditures de-  
22 scribed in paragraph (1) only if a law is enacted not  
23 later than January 1, 2000, that specifically pre-  
24 scribes authorized uses of the Trust Fund.

1 (e) BUDGETARY TREATMENT.—This section con-  
2 stitutes budget authority in advance of appropriations  
3 Acts.

4 (f) TERMINATION OF EFFECTIVENESS.—The author-  
5 ity provided by this section terminates effective January  
6 1, 2000, unless a law is enacted not later than January  
7 1, 2000, that specifically prescribes authorized uses of the  
8 Trust Fund.

1 **TITLE V—STANDARDS TO RE-**  
2 **DUCE INVOLUNTARY EXPO-**  
3 **SURE TO TOBACCO SMOKE**

4 **SEC. 501. STANDARDS TO REDUCE INVOLUNTARY EXPO-**  
5 **SURE TO TOBACCO SMOKE.**

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

9 **“SEC. 35. STANDARDS TO REDUCE INVOLUNTARY EXPO-**  
10 **SURE TO TOBACCO SMOKE.**

11 **“(a) DEFINITIONS.—**In this section—

12 **“(1) PUBLIC FACILITY.—**

13 **“(A) IN GENERAL.—**The term ‘public facil-  
14 ity’ means any workplace covered by this Act  
15 and any enclosed structure regularly entered by  
16 10 or more individuals at least 1 day per week,  
17 including any such building owned by or leased  
18 to a Federal, State, or local government entity  
19 (including Congress). Such term shall not in-  
20 clude any building or portion thereof while used  
21 as a private residence.

22 **“(B) EXCLUSIONS.—**The term ‘public fa-  
23 cility’ does not include a portion of a building  
24 which is used as a bar, a facility in which a re-  
25 tailer engages primarily in the business of sell-

1           ing tobacco products, a hotel guest room that is  
2           designated as a smoking room, a private club  
3           while in use for social or fraternal activities  
4           that are not open to the public, a casino, a  
5           bingo parlor, a restaurant with an indoor seat-  
6           ing capacity of fewer than 50 individuals that  
7           is not a fast food restaurant, or a prison.

8           “(C) BAR.—The term “bar” means any in-  
9           door area that is open to the general public and  
10          that is devoted to the sale and service of alco-  
11          holic beverages for on-premises consumption  
12          where the service of food is only incidental to  
13          the consumption of such beverages. Service of  
14          food shall be considered incidental if the food  
15          service generates less than 50 percent of the  
16          total annual gross food and liquor sales of the  
17          establishment.

18          “(D) FAST FOOD RESTAURANT.—As used  
19          in subparagraph (B), the term ‘fast food res-  
20          taurant’ means any restaurant or chain of res-  
21          taurants in which employees primarily distrib-  
22          ute food through a customer pick-up (either at  
23          a counter or drive-through window). The Ad-  
24          ministrator of the Occupational Safety and  
25          Health Administration may promulgate regula-

1           tions to clarify this subparagraph to ensure  
2           that the intended inclusion of workers in estab-  
3           lishments catering largely to individuals under  
4           18 years of age is achieved.

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

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

11           “(1) POLICY REQUIRED.—In order to protect  
12           children and adults from cancer, respiratory disease,  
13           heart disease, and other adverse health effects asso-  
14           ciated with breathing environmental tobacco smoke,  
15           the responsible entity for each public facility shall  
16           adopt and implement at such facility a smoke-free  
17           environment policy which meets the requirements of  
18           paragraph (2) or (4).

19          “(2) ELEMENTS OF POLICY.—

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

22                   “(i) prohibit the smoking of ciga-  
23                   rettes, cigars, and pipes, and any other  
24                   combustion of tobacco within the facility  
25                   and on facility property within the imme-

1           diate vicinity of the entrance to the facility  
2           or any air intake vent (including open win-  
3           dows and doors); and

4           “(ii) post a clear and prominent no-  
5           tice of the smoking prohibition in appro-  
6           priate and visible locations at the public fa-  
7           cility.

8           “(B) EXCEPTION.—The smoke-free envi-  
9           ronment policy for a public facility may provide  
10          an exception to the prohibition specified in sub-  
11          paragraph (A) for 1 or more specially des-  
12          ignated smoking areas within a public facility if  
13          such area or areas meet the requirements of  
14          paragraph (3).

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

18                 “(A) the area is ventilated in accordance  
19                 with specifications promulgated by the Sec-  
20                 retary of Labor, in consultation with the Ad-  
21                 ministrators of the Environmental Protection  
22                 Agency, that ensure that air from the area is  
23                 directly exhausted to the outside of the building  
24                 and does not recirculate or drift to other areas  
25                 within the public facility;



1           “(B) the area is maintained at negative  
2           pressure, as compared to adjacent nonsmoking  
3           areas, as determined under regulations promul-  
4           gated by the Secretary of Labor, in consultation  
5           with the Administrator of the Environmental  
6           Protection Agency; and

7           “(C) nonsmoking individuals are fully ad-  
8           vised that the area is a smoking area and such  
9           individuals do not have to enter the area for  
10          any purpose while smoking is occurring in such  
11          area, and for an additional period that allows  
12          for at least 3 air exchanges to occur in the  
13          room.

14          Cleaning and maintenance work shall be conducted  
15          in such area only while no smoking is occurring in  
16          the area, following an additional period that allows  
17          for at least 3 air exchanges to occur in the room.

18          “(4) SPECIAL RULES.—

19                 “(A) SCHOOLS AND OTHER FACILITIES  
20                 SERVING CHILDREN.—

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

24                                 “(I) adopt and implement at  
25                                 such facility a smoke-free environment

1 policy that prohibits the smoking of  
2 cigarettes, cigars, and pipes, and any  
3 other combustion of tobacco within  
4 the facility and on facility property;

5 “(II) adopt and implement at  
6 such facility a smoke-free environment  
7 policy that prohibits the use of smoke-  
8 less tobacco products within the facil-  
9 ity and on facility property; and

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

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

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

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

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

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

8                   “(B) PUBLIC TRANSPORTATION.—

9                   “(i) IN GENERAL.—With respect to  
10                  any responsible entity which operates con-  
11                  veyances of public transportation (includ-  
12                  ing bus, rail, aircraft, boat, or any other  
13                  conveyance determined appropriate by the  
14                  Secretary of Labor), the responsible entity  
15                  shall—

16                  “(I) adopt and implement on  
17                  such conveyances a smoke-free envi-  
18                  ronment policy that prohibits the  
19                  smoking of cigarettes, cigars, and  
20                  pipes, and any other combustion of to-  
21                  bacco within the conveyance and on  
22                  property affiliated with the convey-  
23                  ance; and

24                  “(II) post a clear and prominent  
25                  notice of the smoking prohibition in

1                   appropriate and visible locations on  
2                   the conveyance.

3                   “(ii) RAIL TRANSPORTATION.—The  
4                   smoke-free environment policy for a re-  
5                   sponsible entity that operates a rail carrier  
6                   providing rail commuter service may pro-  
7                   vide an exception to the prohibition speci-  
8                   fied in clause (i) with respect to such serv-  
9                   ice for 1 or more specially designated  
10                  smoking cars if such cars meet the require-  
11                  ments of paragraph (3).

12                  “(c) ENFORCEMENT.—To be eligible to receive funds  
13                  under the Healthy Kids Act, a State shall make a dem-  
14                  onstration to the Secretary that the State is enforcing this  
15                  section within the State. Such laws or procedures shall  
16                  permit aggrieved individuals to enforce this section  
17                  through administrative and judicial means.

18                  “(d) PREEMPTION.—Notwithstanding section 18,  
19                  nothing     this section shall preempt or otherwise affect  
20                  any other existing or future Federal, State or local law  
21                  which provides protection from health hazards from envi-  
22                  ronmental tobacco smoke that are as least as stringent  
23                  as those provided for in this section.

24                  “(e) REGULATIONS.—Not later than 12 months after  
25                  the date of enactment of this section, the Secretary of

1 Labor shall promulgate such regulations as the Secretary  
2 deems necessary to carry out this section.

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

1 **TITLE VI—PUBLIC HEALTH AND**  
2 **OTHER PROGRAMS**

3 **Subtitle A—Research Programs**

4 **SEC. 601. TOBACCO-RELATED RESEARCH.**

5 (a) IN GENERAL.—The Secretary shall establish a  
6 program to encourage and promote (through grants, con-  
7 tracts, or otherwise) expanded research, investigations, ex-  
8 periments and studies, concerning—

9 (1) the relationship between the use of tobacco  
10 products and cancer, cardiovascular diseases, lung  
11 diseases and other diseases;

12 (2) the effects of tobacco products, ingredients  
13 of tobacco products, and tobacco smoke on the  
14 human body and methods of reducing any negative  
15 effects, including the development of non-addictive,  
16 reduced risk tobacco products;

17 (3) the addictive effects of nicotine and how  
18 such effects differ with respect to different individ-  
19 uals;

20 (4) the prevention and cure of diseases and ill-  
21 nesses most associated with the use of tobacco prod-  
22 ucts;

23 (5) differentials between brands of tobacco  
24 products with respect to health effects or addiction;

1           (6) the effectiveness of drugs and devices in as-  
2           sisting individuals to stop using tobacco products;  
3           and

4           (7) the relationship between the use of tobacco  
5           products and cancer, particularly among minorities.

6           (b) ELIGIBILITY.—To be eligible to receive a grant,  
7           contract, or other assistance under this section an entity  
8           or individual shall prepare and submit to the Secretary  
9           an application at such time, in such manner, and contain-  
10          ing such information as the Secretary may require.

11          (c) USE OF FUNDS.—Amounts received by an indi-  
12          vidual or entity under this section shall be used to carry  
13          out activities under the program established under sub-  
14          section (a).

15          (d) ADDITIONAL REQUIREMENTS.—To be eligible to  
16          receive a grant, contract, or other assistance under this  
17          section an entity or individual shall provide assurances to  
18          the Secretary that—

19                (1) any research to be conducted under the  
20                grant or contract will be generally consistent with  
21                the requirements applicable to research conducted  
22                under the authority of the National Institutes of  
23                Health;

24                (2) adequate records will be maintained with re-  
25                spect to such assistance; and

1           (3) amounts provided to the individual or entity  
2           will be subject to independent audit.

3           (e) EFFECT ON MINORITIES AND WOMEN.—The pro-  
4 gram established under subsection (a) shall be conducted  
5 in a manner that ensures that research will be conducted  
6 to investigate the different effects of tobacco use on mi-  
7 norities and women.

8           (f) DISSEMINATION OF RESULTS.—The Secretary  
9 shall establish procedures for the dissemination of the re-  
10 sults of the research conducted under this section.

11          (g) FUNDING.—There shall be made available to  
12 carry out this section an amount equal to the amount  
13 made available under section 121(e)(1)(D) for a fiscal  
14 year.

15 **SEC. 602. RESEARCH RELATING TO PATTERNS OF SMOK-**  
16 **ING.**

17          (a) IN GENERAL.—The Secretary shall establish a  
18 program to provide for the conduct of research (through  
19 the provision of grants, contracts, or otherwise) concern-  
20 ing the cultural, social, behavioral, neurological and psy-  
21 chological reasons that individuals refrain from using to-  
22 bacco products, begin to use tobacco products, continue  
23 using tobacco products, or quit using tobacco products.

24          (b) ELIGIBILITY.—To be eligible to receive a grant,  
25 contract, or other assistance under this section an entity



1 or individual shall prepare and submit to the Secretary  
2 an application at such time, in such manner, and contain-  
3 ing such information as the Secretary may require.

4 (c) USE OF FUNDS.—Amounts received by an indi-  
5 vidual or entity under this section shall be used to carry  
6 out activities under the program established under sub-  
7 section (a).

8 (d) ADDITIONAL REQUIREMENTS.—To be eligible to  
9 receive a grant, contract, or other assistance under this  
10 section an entity or individual shall provide assurances to  
11 the Secretary that—

12 (1) any research to be conducted under the  
13 grant or contract will be generally consistent with  
14 the requirements applicable to research conducted  
15 under the authority of the National Institutes of  
16 Health;

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

19 (3) amounts provided to the individual or entity  
20 will be subject to independent audit.

21 (e) EFFECT ON MINORITIES AND WOMEN.—The pro-  
22 gram established under subsection (a) shall be conducted  
23 in a manner that ensures that research will be conducted  
24 to investigate the different factors affecting tobacco use

1 among minorities and women in proportion to their preva-  
2 lence in the smoking population.

3 (f) DISSEMINATION OF RESULTS.—The Secretary  
4 shall establish procedures for the dissemination of the re-  
5 sults of the research conducted under this section.

6 (g) FUNDING.—There shall be made available to  
7 carry out this section an amount equal to 10 percent of  
8 the amounts made available under section 101(d)(5)(C)  
9 for a fiscal year.

10 **SEC. 603. SURVEILLANCE AND EVALUATION.**

11 (a) IN GENERAL.—The Secretary, acting through the  
12 Director of the Centers for Disease Control and Preven-  
13 tion, shall conduct surveillance and evaluation activities,  
14 including the surveys authorized under title III, to monitor  
15 patterns of tobacco use and determine the effectiveness of  
16 various anti-tobacco programs funded under this Act.  
17 Such activities shall include studies of the responsiveness  
18 of smokers and potential smokers, particularly youth  
19 smokers, to price increases and non-price incentives.

20 (b) FUNDING.—There shall be made available to  
21 carry out this section an amount equal to 5 percent of  
22 the amounts made available under section 101(d)(5)(C)  
23 for a fiscal year.

1                   **Subtitle B—Education and**  
2                   **Prevention Programs**

3 **SEC. 611. GRANTS FOR SCHOOL AND COMMUNITY-BASED**  
4                   **TOBACCO DANGER EDUCATION PROGRAMS.**

5           (a) **IN GENERAL.**—The Secretary shall establish a  
6 program to award grants to States to enable such  
7 States—

8                   (1) to carry out school-based and college- or  
9 university-based education programs concerning the  
10 dangers of using tobacco products using methods  
11 that are proven and effective; and

12                   (2) to carry out community-based prevention  
13 programs, including in predominantly minority com-  
14 munities, using methods that are proven and effec-  
15 tive.

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

22                   (1) the types of programs that the State will  
23 fund under the grant;

24                   (2) the manner in which the State will ensure  
25 that the programs will be age-appropriate, culturally

1 appropriate, and linguistically appropriate for the  
2 target population; and

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

5 (c) USE OF FUNDS.—Amounts received by a State  
6 under this section shall be used to—

7 (1) carry out State-wide school-based education  
8 programs that are focused on those regions of the  
9 State with high smoking rates and targeted at popu-  
10 lations who are most at risk to start smoking;

11 (2) carry out State-wide college- and university-  
12 based education programs to discourage individuals  
13 between the ages of 18 and 24 from beginning to  
14 use tobacco products, such programs to be focused  
15 on colleges or universities with high smoking rates;

16 (3) carry out community-based prevention pro-  
17 grams that are focused on those populations within  
18 the community that are most at-risk to use tobacco  
19 products or that have been targeted by tobacco ad-  
20 vertising or marketing;

21 (4) develop curriculums for such programs;

22 (5) acquire materials for such programs;

23 (6) expand the IMPACT or ASSIST program;

24 and

1           (7) carry out other activities determined appro-  
2           priate by the Secretary.

3           (d) ADDITIONAL REQUIREMENTS.—To be eligible to  
4 receive a grant under this section a State shall provide  
5 assurances to the Secretary that—

6           (1) the State will annually report to the Sec-  
7           retary on the effectiveness of the educational ap-  
8           proaches implemented by the State;

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

11          (3) amounts provided to individuals or entities  
12          will be subject to independent audit; and

13          (4) the State will involve local public health of-  
14          ficials in the planning and implementation of the  
15          program.

16          (e) FUNDING.—There shall be made available to  
17 carry out this section an amount equal to 15 percent of  
18 the amounts made available under section 101(d)(5)(C)  
19 for a fiscal year.

20                   **Subtitle C—Miscellaneous**  
21                   **Programs**

22           **SEC. 621. COUNTER-ADVERTISING PROGRAMS.**

23           (a) IN GENERAL.—The Secretary shall carry out pro-  
24 grams to reduce tobacco usage through media-based (such  
25 as counter-advertising campaigns) and nonmedia-based

1 education, prevention and cessation campaigns designed to  
2 discourage the use of tobacco products by individuals and  
3 to encourage those who use such products to quit. Such  
4 programs shall include national and local campaigns and  
5 shall target, in a culturally and linguistically appropriate  
6 manner, adults, children, women and minorities who have  
7 been targeted by tobacco industry advertising.

8 (b) ELIGIBILITY.—To be eligible to receive assistance  
9 under this section an entity or individual shall prepare and  
10 submit to the Secretary an application at such time, in  
11 such manner, and containing such information as the Sec-  
12 retary may require.

13 (c) USE OF FUNDS.—Amounts received by an indi-  
14 vidual or entity under this section shall be used to carry  
15 out activities under the programs established under sub-  
16 section (a). Such amounts may be used to design and im-  
17 plement such activities and to conduct research concerning  
18 the effectiveness of such programs.

19 (d) FUNDING.—There shall be made available to  
20 carry out this section an amount equal to 25 percent of  
21 the amounts made available under section 101(d)(5)(C)  
22 for a fiscal year.

23 **SEC. 622. NATIONAL TOBACCO CESSATION PROGRAM.**

24 (a) ESTABLISHMENT.—There is established a pro-  
25 gram to be known as the “National Tobacco Cessation

1 Program". The Secretary may award grants to, and enter  
2 into contracts and cooperative agreements with, public and  
3 private entities for the purpose of expanding the availabil-  
4 ity and utilization of tobacco use cessation services.

5 (b) USE OF FUNDS.—Amounts made available under  
6 a grant, contract or cooperative agreement under sub-  
7 section (a) shall be used for the planning, establishment,  
8 or administration of tobacco use cessation programs ap-  
9 proved in accordance with subsection (c).

10 (c) CESSATION PROGRAMS.—Programs receiving as-  
11 sistance under this section shall provide a range and qual-  
12 ity of services consistent with the most recent cessation  
13 service guidelines issued by the Agency for Health Care  
14 Policy and Research. Using the best available scientific in-  
15 formation, the Secretary shall promulgate such additional  
16 guidelines as are necessary to assure the quality, acces-  
17 sibility and cost effectiveness of services receiving funds  
18 under this section.

19 (d) FUNDING.—There shall be made available to  
20 carry out this section an amount equal to 33 percent of  
21 the amounts made available under section 101(d)(5)(C)  
22 for a fiscal year.

1 **SEC. 623. ASSISTANCE FOR THOSE SUFFERING FROM TO-**  
2 **BACCO-RELATED ILLNESSES.**

3 (a) **IN GENERAL.**—The Secretary shall establish a  
4 program to provide assistance and compensation to indi-  
5 viduals (and entities providing services to such individuals)  
6 suffering from tobacco-related illnesses and conditions.  
7 Under such program assistance shall be targeted at indi-  
8 viduals who are determined to be uninsured or under-  
9 insured and who can demonstrate financial hardship.

10 (b) **DEVELOPMENT OF PLAN.**—The Secretary shall  
11 carry out the program established under subsection (a)  
12 under a plan to be developed by the Secretary, not later  
13 than 1 year after the date of enactment of this Act.

14 (c) **ELIGIBILITY.**—

15 (1) **OF ENTITIES.**—To be eligible to receive as-  
16 sistance under this section an entity shall—

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

18 (B) prepare and submit to the Secretary  
19 an application at such time, in such manner,  
20 and containing such information as the Sec-  
21 retary may require;

22 (C) provide assurances that amounts re-  
23 ceived under the grant will be used in accord-  
24 ance with subsection (d)(1); and

25 (D) meet any other requirements deter-  
26 mined appropriate by the Secretary.



1           (2) OF INDIVIDUALS.—To be eligible to receive  
2 assistance under this section an individual shall—

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

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

10           (C) meet any other requirements deter-  
11 mined appropriate by the Secretary.

12       (d) USE OF FUNDS.—Assistance provided under this  
13 section shall be used—

14           (1) in the case of an entity eligible under sub-  
15 section (c)(1), to provide treatment for tobacco-relat-  
16 ed illnesses; or

17           (2) in the case of an individual eligible under  
18 subsection (c)(2), to pay for the receipt of treat-  
19 ments for tobacco-related illnesses.

20       (e) ADDITIONAL REQUIREMENTS.—In providing as-  
21 sistance under this section, the Secretary shall ensure that  
22 such assistance is not used to duplicate any payments  
23 made under any health insurance plans but rather to cover  
24 uncompensated care provided to individuals with tobacco-  
25 related illnesses.

1 (f) FUNDING.—There shall be made available to  
2 carry out this section an amount equal to 3 percent of  
3 the amounts made available under section 101(d)(5)(C)  
4 for a fiscal year.

5 **SEC. 624. INTERNATIONAL TOBACCO CONTROL.**

6 (a) GOVERNMENTAL ACTIVITIES.—

7 (1) IN GENERAL.—The Secretary (in consulta-  
8 tion with the Secretary of State) may provide bilat-  
9 eral assistance, including technical assistance  
10 through the Centers for Disease Control and Preven-  
11 tion, to foreign countries and multilateral assistance  
12 to assist such countries and Organization in reduc-  
13 ing and preventing the use of tobacco in foreign  
14 countries. Such assistance shall be focused on pre-  
15 venting the use of tobacco products by minors.

16 (2) FUNDING.—There shall be made available  
17 to carry out this subsection an amount equal to 2  
18 percent of the amounts made available under section  
19 101(d)(5)(C) for a fiscal year. Such amount shall be  
20 split equally between bilateral and multilateral as-  
21 sistance.

22 (b) NONGOVERNMENTAL ACTIVITIES.—

23 (1) PURPOSE.—The purpose of this subsection  
24 is to establish the American Center on Global  
25 Health and Tobacco (referred to in this subsection

1 as “ACT”). ACT shall assist organizations in other  
2 countries to reduce and prevent the use of tobacco.  
3 Activities ACT supports shall include—

4 (A) public education programs that inform  
5 the public about the hazards of tobacco use and  
6 of environmental tobacco smoke;

7 (B) mass media campaigns, including paid  
8 counter-tobacco advertisements, to reverse the  
9 image appeal of pro-tobacco messages, espe-  
10 cially those that glamorize and “Westernize” to-  
11 bacco use to young people; and

12 (C) education about the economic and soci-  
13 etal costs of tobacco use, and effective tobacco  
14 use prevention and cessation strategies that are  
15 appropriate for the country involved.

16 (2) ESTABLISHMENT.—

17 (A) IN GENERAL.—There is hereby estab-  
18 lished in the District of Columbia a private,  
19 nonprofit corporation to be known as the Amer-  
20 ican Center on Global Health and Tobacco.  
21 ACT shall—

22 (i) not be an agency or establishment  
23 of the United States; and

24 (ii) except as otherwise provided in  
25 this section, be subject to, and have all the

1 powers conferred upon a nonprofit corpora-  
2 tion by the District of Columbia Nonprofit  
3 Corporation Act (D.C. Code section 29-501  
4 et seq.).

5 (B) RELATION TO UNITED STATES.—  
6 Nothing in this subsection shall be construed as  
7 making ACT an agency or establishment of the  
8 United States, or as making the members of  
9 the Board of ACT, or its employees, officers or  
10 employees of the United States.

11 (C) RELATION TO NONGOVERNMENTAL OR-  
12 GANIZATIONS.—ACT shall have a limited staff,  
13 and, to the maximum extent practicable, utilize  
14 the available experience and talents of non-  
15 governmental organizations with specialized ex-  
16 perience in health, education, media, and to-  
17 bacco.

18 (D) GOVERNING BOARD.—The Secretary  
19 shall appoint a governing board of up to 25  
20 members including—

21 (i) on a bipartisan basis, Members of  
22 the Senate and of the House of Represent-  
23 atives;

24 (ii) the heads of American public  
25 health organizations;

1 (iii) the heads of American media,  
2 marketing, and other nongovernment insti-  
3 tutions and corporations; and

4 (iv) individuals active in education,  
5 public health, and other relevant activities.

6 (E) INTERNATIONAL ADVISORY COUN-  
7 CIL.—An International Advisory Council con-  
8 sisting of representatives from key global, re-  
9 gional, and national public health organizations,  
10 and leading individual educators and health  
11 professionals shall provide advisory assistance  
12 to ACT.

13 (3) FUNDING.—The Secretary of the Treasury  
14 shall on October 1 of each fiscal year beginning after  
15 the date of enactment of this Act, transfer an  
16 amount equal to 1 percent of the amounts made  
17 available under section 101(d)(5)(C) for the fiscal  
18 year to ACT to carry out this subsection.

19 (4) REQUIREMENTS FOR ELIGIBILITY FOR AN-  
20 NUAL TRANSFERS FROM THE TRUST FUND.—

21 (A) OVERSIGHT.—ACT and its grantees  
22 shall be subject to the oversight and supervision  
23 of Congress.

24 (B) COMPLIANCE.—

1 (i) FUNDING CONTINGENT ON COM-  
2 PLLANCE.—Annual payments from the  
3 Trust Fund may be made to ACT under  
4 this subsection only if ACT complies with  
5 the requirements specified in this sub-  
6 section.

7 (ii) USE OF FUNDS.—ACT may only  
8 fund programs for private sector groups,  
9 and may not carry out programs directly.  
10 ACT may provide funding only for pro-  
11 grams which are consistent with the pur-  
12 poses of this subsection.

13 (C) SALARIES AND COMPENSATION.—

14 (i) NO OTHER SOURCE OF COMPENSA-  
15 TION.—Officers and employees of ACT  
16 may not receive any salary or other com-  
17 pensation from any source other than ACT  
18 for services performed for ACT.

19 (ii) UNITED STATES OFFICERS AND  
20 EMPLOYEES.—An individual who is an offi-  
21 cer or employee of the United States who  
22 also serves on the Board of Directors or as  
23 an officer or employee of ACT, may not re-  
24 ceive any compensation or travel expenses

1 in connection with services performed for  
2 ACT.

3 (D) STOCKS AND DIVIDENDS.—ACT shall  
4 not issue any shares of stock or declare or pay  
5 any dividends.

6 (E) AUDITS.—

7 (i) PUBLIC ACCOUNTS.—The accounts  
8 of ACT shall be audited annually in ac-  
9 cordance with generally accepted auditing  
10 standards.

11 (ii) COMPTROLLER GENERAL.—The  
12 financial transactions of ACT for each fis-  
13 cal year may be audited by the Comptroller  
14 General. A report of each audit shall be  
15 made by the Comptroller General to Con-  
16 gress. A copy of each report shall be fur-  
17 nished to the President and to ACT at the  
18 time the report is submitted to Congress.

19 (F) RECORDKEEPING.—ACT shall ensure  
20 that each recipient of assistance from ACT  
21 under this subsection keeps such records as  
22 may be reasonably necessary to fully disclose  
23 the amount and the disposition by such recipi-  
24 ent of the proceeds of such assistance, the total  
25 cost of the project or undertaking in connection

1 with which such assistance is given or used, and  
2 the amount and nature of that portion of the  
3 cost of the project or undertaking supplied by  
4 other sources, and such other records as will fa-  
5 cilitate an effective audit. ACT shall ensure  
6 that it, or any of its duly authorized representa-  
7 tives, shall have access for the purpose of audit  
8 and examination to any books, documents, pa-  
9 pers, and records of each recipient of assistance  
10 from ACT that are pertinent to assistance pro-  
11 vided through ACT under this subsection.

12 **SEC. 625. NATIONAL EVENT SPONSORSHIP PROGRAM.**

13 (a) **ESTABLISHMENT.**—The Secretary shall establish  
14 a program to be known as the “National Event Sponsor-  
15 ship Program” under which the Secretary may award  
16 grants to eligible entities or individuals for the sponsorship  
17 of activities described in subsection (c).

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

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



1 (A) a description of the event, activity,  
2 team, or entry for which the grant is to be pro-  
3 vided;

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

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

12 (2) provide assurances that amounts received  
13 under the grant will be used in accordance with sub-  
14 section (d); and

15 (3) meet any other requirements determined ap-  
16 propriate by the Secretary.

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

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

24 (2) the participation of a team that was spon-  
25 sored in whole or in part by a tobacco manufacturer

1 or distributor prior to the date of enactment of this  
2 Act, in an athletic event or activity; and

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

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

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

15 (B) provide for the sponsorship of an individual  
16 or team;

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

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

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

1 **TITLE VII—LIABILITY PROTEC-**  
2 **TION; CONSENT DECREES; NA-**  
3 **TIONAL PROTOCOL**  
4 **Subtitle A—Liability Protection**  
5 **and Attorney Fees**

6 **SEC. 701. DISMISSAL OF AND LIMITATIONS ON CIVIL AC-**  
7 **TIONS.**

8 (a) STATE ATTORNEY GENERAL ACTIONS.—

9 (1) PENDING ACTIONS.—With respect to a  
10 State, to be eligible to receive funds under section  
11 111, the attorney general for such State shall resolve  
12 any civil action seeking recovery for expenditures at-  
13 tributable to the treatment of tobacco-related ill-  
14 nesses and conditions that has been commenced by  
15 the State against a manufacturer, distributor, or re-  
16 tailer of a tobacco product and is pending on the  
17 date of enactment of this Act.

18 (2) FUTURE ACTIONS BASED ON PRIOR CON-  
19 DUCT.—With respect to a State, to be eligible to re-  
20 ceive funds under section 111, the attorney general  
21 for such State shall agree that the State will not  
22 commence a civil action after the date of enactment  
23 of this Act that is based on the conduct of a partici-  
24 pating manufacturer, distributor or retailer of a to-  
25 bacco product that occurred prior to the date of en-

1 actment of this Act seeking recovery for expendi-  
2 tures attributable to the treatment of tobacco in-  
3 duced illnesses and conditions against such a manu-  
4 facturer, distributor or retailer.

5 (3) APPLICATION TO LOCAL GOVERNMENTAL  
6 ENTITIES.—The requirements described in para-  
7 graphs (1) and (2) shall apply to civil actions com-  
8 menced by or on behalf of local governmental enti-  
9 ties for the recovery of costs attributable to tobacco-  
10 related illnesses if such localities are within a State  
11 whose attorney general has elected to resolve actions  
12 under paragraph (1) and enter into the agreement  
13 described in paragraph (2). Such provisions shall not  
14 apply to those local governmental entities that are  
15 within a State whose attorney general has not re-  
16 solved such actions or entered into such agreements.

17 (b) STATE OPTION FOR ONE-TIME OPT OUT.—

18 (1) IN GENERAL.—The Secretary shall establish  
19 procedures under which the attorney general of a  
20 State may, not later than 1 year after the date of  
21 enactment of this Act, elect not to resolve an action  
22 described in subsection (a)(1) or not enter into an  
23 agreement under subsection (a)(2). A State whose  
24 attorney general that makes such an election shall  
25 not be eligible to receive payments from the Trust

1 Fund under section 111. Procedures under this  
2 paragraph shall permit such a State to make such  
3 an election on a one-time basis.

4 (2) EXTENSION.—In the case of a State that  
5 has secured a judgment against a manufacturer, dis-  
6 tributor or retailer of a tobacco product in an action  
7 described in subsection (a)(1) prior to or during the  
8 period described in paragraph (1), and such judg-  
9 ment has been appealed by such manufacturer, dis-  
10 tributor, or retailer, such period shall be extended  
11 during the pendency of the appeal and for an addi-  
12 tional period as determined appropriate by the Sec-  
13 retary.

14 (3) APPLICATION TO CERTAIN STATES.—A  
15 State that has resolved an action described in sub-  
16 section (a)(1) with a manufacturer, distributor or re-  
17 tailer of a tobacco product prior to the date of en-  
18 actment of this Act may not make an election de-  
19 scribed in paragraph (1) if, as part of the resolution  
20 of such action, the State agreed that the enactment  
21 of any national tobacco settlement legislation would  
22 supersede the provisions of the resolution.

23 (c) FEDERAL ACTIONS.—The Federal Government is  
24 barred from commencing a civil action against a partici-  
25 pating manufacturer, distributor, or retailer of a tobacco

1 product seeking recovery for expenditures attributable to  
2 the treatment of tobacco-related illnesses associated with  
3 the conduct of a manufacturer that occurred prior to the  
4 date of enactment of this Act.

5 (d) RULES OF CONSTRUCTION.—

6 (1) POST ENACTMENT CLAIMS.—Nothing in  
7 this title shall be construed to limit the ability of a  
8 government, entity, or individual to commence an  
9 action against a participating manufacturer, dis-  
10 tributor or retailer of a tobacco product with respect  
11 to a claim that is based on the conduct of such man-  
12 ufacturer, distributor or retailer that occurred after  
13 the date of enactment of this Act.

14 (2) NO LIMITATION ON INDIVIDUALS.—Nothing  
15 in this section shall be construed to limit the right  
16 of an individual to commence a civil action for past,  
17 present, or future conduct by manufacturers, dis-  
18 tributors or retailers of tobacco products.

19 (e) DEFINITION.—As used in this section, the term  
20 “participating manufacturer” means a manufacturer of  
21 tobacco products that has entered into a consent decree  
22 under section 711 and that is a signatory to the Protocol  
23 under section 721.

1 **SEC. 702. ATTORNEY'S FEES AND EXPENSES.**

2 (a) SOURCE AND PAYMENT OF AWARDS.—In no  
3 event shall any award of the Arbitration Panel established  
4 under subsection (b) be paid from, credited against, or  
5 otherwise affect in any way any fee payments that are re-  
6 quired to be made by any participating manufacturer  
7 under to section 102 or under any other provision of this  
8 Act. Any such award shall be paid by participating manu-  
9 facturers pursuant to an allocation agreement among such  
10 manufacturers.

11 (b) ARBITRATION PANEL.—

12 (1) ESTABLISHMENT.—For the purpose of  
13 awarding of attorneys' fees and expenses relating to  
14 litigation affected by, or legal services that resulted  
15 in whole or in part in, this Act, there is established  
16 an Arbitration Panel which shall consist of—

17 (A) 4 members to be appointed by the At-  
18 torney General in consultation with the Trust-  
19 ees;

20 (B) 1 member to be appointed by the man-  
21 ufacturers;

22 (C) 1 member to be appointed by the At-  
23 torneys General of the States; and

24 (D) 1 member to be appointed by the pri-  
25 vate attorneys.

26 (2) OPERATION.—

1           (A) ESTABLISHMENT.—The members of  
2           the Arbitration Panel shall be appointed not  
3           later than 30 days after the effective date of  
4           this Act.

5           (B) PROCEDURES.—Not later than 30  
6           days after the date on which all members of the  
7           Arbitration Panel are appointed under para-  
8           graph (1), the Panel shall establish the proce-  
9           dures under which the Panel will operate which  
10          shall include—

11           (i) a requirement that any finding by  
12           the Arbitration Panel must be in writing  
13           and supported by written reasons;

14           (ii) procedures for the exchanging of  
15           exhibits and witness lists by the various  
16           claimants for awards;

17           (iii) to the maximum extent prac-  
18           ticable, requirements that proceedings be-  
19           fore the Panel be based on affidavits rath-  
20           er than live testimony; and

21           (iv) a requirement that all claims be  
22           submitted to the Arbitration Panel not  
23           later than 3 months after the effective date  
24           of this Act and a determination made by  
25           the Panel with respect to such claims not



1 later than 7 months after such date of en-  
2 actment.

3 (3) RIGHT TO PETITION.—Any individual attor-  
4 ney or group of attorneys involved in litigation af-  
5 fected by this Act shall have the right to petition the  
6 Arbitration Panel for attorneys' fees and expenses.

7 (4) CRITERIA.—In making any award pursuant  
8 to this section, the Arbitration Panel shall consider  
9 the following criteria:

10 (A) The time and labor required by the  
11 claimant.

12 (B) The novelty and difficulty of the ques-  
13 tions involved in the action for which the claim-  
14 ant is making a claim.

15 (C) The skill requisite to perform the legal  
16 service involved properly.

17 (D) The preclusion of other employment by  
18 the attorney due to acceptance of the action in-  
19 volved.

20 (E) Whether the fee is fixed or a percent-  
21 age.

22 (F) Time limitations imposed by the client  
23 or the circumstances.

24 (G) The amount involved and the results  
25 obtained.

1           (HI) The experience, reputation, and ability  
2           of the attorneys involved.

3           (I) The undesirability of the action.

4           (J) Such other factors as justice may re-  
5           quire.

6           (5) APPEAL AND ENFORCEMENT.—The findings  
7           of the Arbitration Panel shall be final, binding, non-  
8           appealable, and payable within 30 days after the  
9           date on which the finding is made public, except that  
10          if an award is to be paid in installments, the first  
11          installment shall be payable within such 30 day pe-  
12          riod and succeeding installments shall be paid annu-  
13          ally thereafter.

14          (c) VALIDITY AND ENFORCEABILITY OF PRIVATE  
15          AGREEMENTS.—Notwithstanding any other provision of  
16          this Act, nothing in this section shall be construed to abro-  
17          gate or restrict in any way the rights of any parties to  
18          mediate, negotiate, or settle any fee or expense disputes  
19          or issues to which this section applies, or to enter into  
20          private agreements with respect to the allocation or divi-  
21          sion of fees among the attorneys party to any such agree-  
22          ment.

## 23           **Subtitle B—Consent Decrees**

### 24          **SEC. 711. CONSENT DECREES.**

25          (a) REQUIREMENT.—

1           (1) IN GENERAL.—Except as provided in para-  
2 graph (2), to be eligible to receive payments under  
3 section 111, a State, and to be eligible to receive li-  
4 ability protections under subtitle A, a tobacco manu-  
5 facturer, shall enter into consent decrees under this  
6 section to be effective on the date of enactment of  
7 this Act.

8           (2) GOOD FAITH EFFORTS.—The limitation de-  
9 scribed in paragraph (1) with respect to payments  
10 under section 111 shall not apply to a State if the  
11 attorney general of the State certifies to the Sec-  
12 retary that—

13                   (A) the State has made good faith efforts  
14 to enter into a consent decree in accordance  
15 with this subtitle; and

16                   (B) such State is willing to be bound by  
17 such decree but such decree does not exist be-  
18 cause—

19                           (i) of the refusal on the part of a to-  
20 bacco manufacturer to enter into such de-  
21 cree; or

22                           (ii) the appropriate court has not en-  
23 tered the decree even though the parties  
24 have lodged such a decree with the court.

25           (b) TERMS AND CONDITIONS.—

1           (1) IN GENERAL.—The consent decrees de-  
2           scribed in subsection (a) shall resolve the State ac-  
3           tion (or potential action in the case of a manufac-  
4           turer that was not a defendant in a State action but  
5           that desires to become a participating manufacturer  
6           or in the case of a State that does not have a suit  
7           pending against a manufacturer) for claims associ-  
8           ated with the conduct of the manufacturer that oc-  
9           curred prior to the date of enactment of this Act.

10           (2) GENERAL TERMS AND CONDITIONS.—The  
11           terms and conditions contained in the consent de-  
12           crees described in subsection (a) shall contain the  
13           following provisions relating to—

14                   (A) restrictions on tobacco product adver-  
15                   tising and marketing and youth access to such  
16                   products;

17                   (B) the termination, establishment, and  
18                   operation of trade associations;

19                   (C) the disclosure of tobacco smoke con-  
20                   stituents;

21                   (D) the disclosure of nontobacco constitu-  
22                   ents and ingredients found in tobacco products;

23                   (E) the disclosure of existing and future  
24                   documents relating to health, toxicity, and ad-  
25                   diction related to tobacco product usage;

1 (F) the obligation of manufacturers to  
2 make payments for the benefit of States, pri-  
3 vate litigants and the general public;

4 (G) the obligation of manufacturers to  
5 enter into the Protocol under subtitle C;

6 (I) the obligation of manufacturers to  
7 interact only with distributors and retailers that  
8 operate in compliance with the applicable provi-  
9 sions of Federal, State, or local law regarding  
10 the marketing and sale of tobacco products;

11 (J) requirements for warnings, labeling,  
12 and packaging of tobacco products;

13 (K) the resolution of pending litigation (or  
14 potential future litigation for misconduct that  
15 occurred prior to the date of enactment of this  
16 Act) as required under subtitle A and as agreed  
17 to by the parties to the decree; and

18 (L) any other matter determined appro-  
19 priate by the Secretary or the parties involved.

20 (3) LIMITATIONS.—The terms and conditions  
21 contained in the consent decrees described in sub-  
22 section (a) shall not contain provisions relating to—

23 (A) tobacco product design, performance,  
24 or modification;

1 (B) manufacturing standards and good  
2 manufacturing practices;

3 (C) testing and regulation with respect to  
4 toxicity and ingredients approval; and

5 (D) the tobacco usage reduction require-  
6 ment described in section 303.

7 (4) ENFORCEABILITY.—The terms and condi-  
8 tions contained in the consent decrees described in  
9 subsection (a) shall be enforceable by the signato-  
10 ries, as well as the Attorney General, and shall in-  
11 clude a provision that prohibits signatories from  
12 challenging the enforceability of the consent decrees.

13 (5) CONSTRUCTION.—The terms and conditions  
14 contained in the consent decrees described in sub-  
15 section (a) shall provide that the terms of the decree  
16 will be construed in a manner that is consistent with  
17 the provision of this Act.

18 (c) APPROVAL.—

19 (1) IN GENERAL.—Prior to the entry of a con-  
20 sent decree by a court under this section the court  
21 must find that the provisions of the consent de-  
22 cree—

23 (A) have been approved by the Secretary  
24 and the Attorney General;

25 (B) are fair and reasonable; and

1 (C) are in the public interest.

2 (2) DETERMINATION BY SECRETARY.—To ap-  
3 prove a consent decree under paragraph (1)(A), the  
4 Secretary and the Attorney General shall have deter-  
5 mined whether the provisions of the decree are con-  
6 sistent with this Act and the Food, Drug and Cos-  
7 metic Act or the rules and regulations promulgated  
8 under such Acts.

9 (3) NOTICE TO PUBLIC.—With respect to the  
10 approval of a consent decree under this section, the  
11 court shall ensure that the public has been given not  
12 less than 60 days notice of the filing of the decree  
13 by the parties and any objections thereto must be  
14 addressed to the satisfaction of the court.

15 (d) ENFORCEMENT.—The provisions of a consent de-  
16 cree entered under this section shall remain in effect and  
17 enforceable in the court in which the decree is entered,  
18 even if the underlying action is dismissed.

19 **SEC. 712. NON-PARTICIPATING MANUFACTURERS.**

20 With respect to a manufacturer that elects not to  
21 enter into a consent decree under section 711, such manu-  
22 facturer shall not be eligible to receive the liability protec-  
23 tions under section 701.

1           **Subtitle C—National Tobacco**  
2                           **Control Protocol**

3                           **CHAPTER 1—ESTABLISHMENT**

4   **SEC. 721. NATIONAL TOBACCO CONTROL PROTOCOL.**

5           (a) **REQUIREMENT.**—To be eligible to receive the li-  
6 ability protections provided for in subtitle A, each tobacco  
7 manufacturer to which this Act applies shall, not later  
8 than 90 days after the date of enactment of this Act, enter  
9 into a National Tobacco Control Protocol with the Attor-  
10 ney General of the United States and the attorney general  
11 of each State that does not elect to opt out under section  
12 701(b)(1).

13           (b) **TERMS AND CONDITIONS.**—The Protocol referred  
14 to in subsection (a) shall be—

15                   (1) developed by the Attorney General, in con-  
16 sultation with the Secretary, the State attorneys'  
17 general, the Federal Trade Commission and other  
18 individuals determined appropriate by the Attorney  
19 General, as a binding and enforceable contract that  
20 embodies the terms of this subtitle; and

21                   (2) designed to be enforceable in Federal or  
22 State courts as provided for in this subtitle.

23           (c) **CONTRACTS.**—As part of the Protocol under this  
24 section, a manufacturer shall agree, with respect to any  
25 contract entered into by the manufacturer with an entity



1 that is a distributor or retailer of tobacco products, to in-  
2 clude in such contract as a term and condition a require-  
3 ment that such distributor or retailer comply with the pro-  
4 visions of the Protocol.

## 5 **CHAPTER 2—TERMS AND CONDITIONS**

### 6 **SEC. 725. APPLICATION OF CHAPTER.**

7 The provisions of this chapter shall be considered as  
8 part of the Protocol.

### 9 **SEC. 726. AGREEMENT TO PROHIBIT CERTAIN ADVERTIS-** 10 **ING.**

#### 11 (a) PROHIBITION ON OUTDOOR ADVERTISING.—

12 (1) IN GENERAL.—No manufacturer, distribu-  
13 tor, or retailer may use any form of outdoor tobacco  
14 product advertising, including billboards, posters, or  
15 placards.

16 (2) STADIA AND ARENAS.—Except as otherwise  
17 provided in this Act, a manufacturer, distributor, or  
18 retailer shall not advertise tobacco products in any  
19 arena or stadium where athletic, musical, artistic or  
20 other social or cultural events or activities occur.

21 (b) PROHIBITION ON USE OF HUMAN IMAGES AND  
22 CARTOONS.—No manufacturer, distributor, or retailer  
23 may use a human image or a cartoon character or cartoon-  
24 type character in its advertising, labeling or promotional  
25 material with respect to a tobacco product.

1 (c) PROHIBITION ON ADVERTISING ON THE  
2 INTERNET.—No manufacturer, distributor, or retailer  
3 may use the Internet to advertise tobacco products unless  
4 such an advertisement is inaccessible in or from the Unit-  
5 ed States.

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

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

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

16 (3) PERMISSIBLE ADVERTISING.—

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

22 (B) RETAILERS.—No manufacturer, dis-  
23 tributor, or retailer may enter into any arrange-  
24 ment with a retailer to limit the ability of the  
25 retailer to display any form of permissible point

1 of sale advertisement or promotional material  
2 originating with another manufacturer, dis-  
3 tributor, or retailer.

4 (4) LIMITATIONS.—

5 (A) IN GENERAL.—A point of sale adver-  
6 tisement permitted under this subsection shall  
7 be comprised of a display area than is not larg-  
8 er than 576 square inches (either individually  
9 or in the aggregate) and shall consist only of  
10 black letters on a white background or other  
11 recognized typographical marks. Such advertise-  
12 ment shall not be attached to nor located within  
13 2 feet of any fixture on which candy is dis-  
14 played for sale.

15 (B) AUDIO AND VIDEO FORMATS.—Audio  
16 and video advertisements otherwise permitted  
17 under this Act may be distributed to individuals  
18 who are 18 years of age or older at point of sale  
19 but may not be played or viewed at such point  
20 of sale.

21 (C) DISPLAY FIXTURES.—Display fixtures  
22 in the form of signs consisting of brand name  
23 and price and not larger than 2 inches in height  
24 are permitted.

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

12 **SEC. 727. CONSENSUAL RESTRICTIONS.**

13       (a) RESTRICTION ON PRODUCT NAMES.—A manu-  
14 facturer shall not use a trade or brand name of a non-  
15 tobacco product as the trade or brand name for a cigarette  
16 or smokeless tobacco product, except for a tobacco product  
17 whose trade or brand name was on both a tobacco product  
18 and a non-tobacco product that were sold in the United  
19 States on January 1, 1998.

20       (b) ADVERTISING LIMIT ACTIONS.—

21           (1) IN GENERAL.—A manufacturer, distributor,  
22 or retailer may in accordance with this Act, dissemi-  
23 nate or cause to be disseminated advertising or la-  
24 beling which bears a tobacco product brand name  
25 (alone or on conjunction with any other word) or

1 any other indicia of tobacco product identification  
2 only in newspapers, in magazines, in periodicals or  
3 other publications (whether periodic or limited dis-  
4 tribution), on billboards, posters and placards in ac-  
5 cordance with section 726(a), in nonpoint of sale  
6 promotional material (including direct mail), in  
7 point-of-sale promotional material, and in audio or  
8 video formats delivered at a point-of-sale.

9 (2) LIMITATION.—A manufacturer, distributor,  
10 or retailer that intends to disseminate, or to cause  
11 to be disseminated, advertising or labeling for a to-  
12 bacco product in a medium that is not described in  
13 paragraph (1) shall notify the Secretary not less  
14 than 30 days prior to the date on which such me-  
15 dium is to be used. Such notice shall describe the  
16 medium and discuss the extent to which the adver-  
17 tising or labeling may be seen by individuals who are  
18 under 18 years of age.

19 (3) ACTION BY SECRETARY.—Not later than 30  
20 days after the date on which the Secretary receives  
21 a notice under paragraph (2), the Secretary shall  
22 make a determination with respect to the action to  
23 be taken concerning such notice.

24 (c) RESTRICTION ON PLACEMENT IN ENTERTAIN-  
25 MENT MEDIA.—

1           (1) IN GENERAL.—No payment shall be made  
2           by any manufacturer, distributor, or retailer for the  
3           placement of any tobacco product or tobacco product  
4           package or advertisement—

5                   (A) as a prop in any television program or  
6                   motion picture produced for viewing by the gen-  
7                   eral public; or

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

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

15           (3) VIDEO.—The term “video” means an audio-  
16           visual work produced for viewing by the general pub-  
17           lic, such as a television program, a motion picture,  
18           a music video, and the audiovisual display of a video  
19           game.

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

1 years of age or through a live performance by an enter-  
2 tainment artist that appeals to such individuals.

3 **SEC. 728. AGREEMENT ON FORMAT AND CONTENT RE-**  
4 **QUIREMENTS FOR LABELING AND ADVERTIS-**  
5 **ING.**

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

12 (b) CERTAIN ADVERTISING EXCEPTED.—

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

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

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

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

22 (B) that appears in any publication  
23 (whether periodic or limited distribution) that is  
24 an adult publication.

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

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

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

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

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

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



1 **SEC. 729. AGREEMENT TO BAN ON NONTOBACCO ITEMS**  
2 **AND SERVICES, CONTESTS AND GAMES OF**  
3 **CHANCE, AND SPONSORSHIP OF EVENTS.**

4 (a) **BAN ON ALL NON-TOBACCO MERCHANDISE.**—No  
5 manufacturer, importer, distributor, or retailer shall mar-  
6 ket, license, distribute, sell or cause to be marketed, li-  
7 censed, distributed or sold any item (other than tobacco  
8 products) or service, which bears the brand name (alone  
9 or in conjunction with any other word), logo, symbol,  
10 motto, selling message, recognizable color or pattern of  
11 colors, or any other indicia of product identification simi-  
12 lar or identifiable to those used for any brand of tobacco  
13 products.

14 (b) **GIFTS, CONTESTS, AND LOTTERIES.**—No manu-  
15 facturer, distributor, or retailer shall offer or cause to be  
16 offered to any person purchasing tobacco products any gift  
17 or item (other than a tobacco product) in consideration  
18 of the purchase of such products, or to any person in con-  
19 sideration of furnishing evidence, such as credits, proofs-  
20 of-purchase, or coupons, of such a purchase.

21 (c) **SPONSORSHIP.**—

22 (1) **IN GENERAL.**—No manufacturer, distribu-  
23 tor, or retailer shall sponsor or cause to be spon-  
24 sored any athletic, musical, artistic or other social or  
25 cultural event, or any entry or team in any event, in  
26 which the brand name (alone or in conjunction with

1 any other word), logo, motto, selling message, rec-  
2 ognizable color or pattern of colors, or any other in-  
3 dicia of product identification similar or identical to  
4 those used for tobacco products is used.

5 (2) USE OF CORPORATE NAME.—A manufac-  
6 turer, distributor, or retailer may sponsor or cause  
7 to be sponsored any athletic, musical, artistic or  
8 other social or cultural event in the name of the cor-  
9 poration which manufactures the tobacco product  
10 if—

11 (A) both the corporate name and the cor-  
12 poration were registered and in use in the Unit-  
13 ed States prior to January 1, 1995; and

14 (B) the corporate name does not include  
15 any brand name (alone or in conjunction with  
16 any other word), logo, symbol, motto, selling  
17 message, recognizable color or pattern of colors,  
18 or any other indicia or product identification  
19 identical or similar to, or identifiable with,  
20 those used for any brand of tobacco products.

### 21 **CHAPTER 3—ENFORCEMENT**

#### 22 **SEC. 731. FEDERAL ENFORCEMENT OF THE PROTOCOL.**

23 (a) ACTIONS.—The Attorney General may bring an  
24 action for the enforcement, or to restrain any breach, of  
25 the Protocol in the United States District Court for the

1 District of Columbia or in the district court of the United  
2 States for the district in which the breach occurred.

3 (b) REMEDY.—In any action under subsection (a),  
4 the district court involved—

5 (1) shall restrain the conduct that is the subject  
6 of the breach of the Protocol;

7 (2) shall order specific performance of the obli-  
8 gations set forth in the Protocol;

9 (3) may order civil penalties against any manu-  
10 facturer who violates a requirement of the Protocol  
11 in an amount not more than \$250,000 per violation  
12 per day; and

13 (4) with respect to officers of manufacturers  
14 who knowingly violate the protocol, may impose ap-  
15 propriate criminal penalties, including incarceration.

16 (c) CONTRACTS WITH STATE AGENCIES.—The Sec-  
17 retary may award grants to or enter into contracts with  
18 an agency of any State to assist in the enforcement of  
19 the provisions of the Protocol.

20 (d) ACTION BY ATTORNEY GENERAL.—With respect  
21 to the funding of any activities under subsection (a), the  
22 Attorney General shall use amounts available in the Trust  
23 Fund under section 102. If the Attorney General deter-  
24 mines that amounts available in the Trust Fund are insuf-

1 ficient, the Attorney General may use amounts available  
2 for the activities of the Department of Justice.

3 **SEC. 732. STATE ENFORCEMENT OF THE PROTOCOL.**

4 (a) CIVIL ACTION.—The attorney general of a State  
5 may bring an action for the enforcement, or to restrain  
6 a breach, of the Protocol if the alleged violation that is  
7 the subject of the proceedings occurred in that State.

8 (b) CONCURRENT JURISDICTION.—Both Federal and  
9 State courts shall have jurisdiction over a proceeding de-  
10 scribed in subsection (a). If such a proceeding is com-  
11 menced in a district court of the United States, the court  
12 shall take into consideration the size and scope of any  
13 State penalties that have been applied for the identical vio-  
14 lations.

15 (c) REMEDIES.—In any proceeding described in sub-  
16 section (b) the remedies available shall be those described  
17 in section 731(b).

18 **SEC. 733. PRIVATE ENFORCEMENT OF PROTOCOL.**

19 (a) IN GENERAL.—A manufacturer may seek a dec-  
20 laration of the rights and obligations of the manufacturer  
21 under the Protocol by filing an action pursuant to section  
22 2201 of title 28, United States Code.

23 (b) CIVIL ACTION.—Any person may bring a civil ac-  
24 tion against a manufacturer to enforce, or restrain

1 breaches of, the Protocol by such manufacturer, except  
2 that—

3           (1) no such action may be commenced or main-  
4           tained if the Secretary has settled a proceeding per-  
5           taining to such alleged breach; and

6           (2) the court, in any such action, shall restrain  
7           conduct in breach of the Protocol and order specific  
8           performance of the obligations set forth in the Pro-  
9           tocol, and may award damages which at a minimum  
10          will recover any economic benefit derived as a result  
11          of the noncompliance involved together with an  
12          amount awarded as a suitable penalty associated  
13          with such breach.

14 Any damages awarded under this subsection shall be re-  
15 mitted to the Treasury.

16          (c) RIGHT OF INTERVENTION.—In any proceeding  
17 described in section 731(a) or 732(a), any manufacturer  
18 may intervene as a matter of right.

1       **TITLE VIII—MISCELLANEOUS**  
2                                   **PROVISIONS**

3   **SEC. 801. PROHIBITION ON USE OF FUNDS TO FACILITATE**  
4                                   **THE EXPORTATION OR PROMOTION OF TO-**  
5                                   **BACCO.**

6       (a) **IN GENERAL.**—Notwithstanding any other provi-  
7 sion of law, no funds made available by appropriations or  
8 otherwise made available may be used by any officer, em-  
9 ployee, department, or agency of the United States—

10           (1) to promote or encourage the export, reex-  
11 port, sale, manufacture, advertising, promotion, dis-  
12 tribution, or use of tobacco or tobacco products to  
13 or in a foreign country; or

14           (2) to seek, through negotiation or otherwise,  
15 the removal or reduction by any foreign country of  
16 any restriction or proposed restriction in that coun-  
17 try on the importation, export, reexport, sale, manu-  
18 facture, advertising, promotion, distribution, packag-  
19 ing, labeling, use, content, imposition of tariffs, or  
20 taxation, of tobacco or tobacco products.

21       (b) **EXCEPTION.**—Subsection (a)(2) shall not apply  
22 to any restriction or proposed restriction by a foreign  
23 country if—

1           (1) the restriction is applied in a manner which  
2 constitutes a means of arbitrary or unjustifiable dis-  
3 crimination between countries;

4           (2) the Secretary of Commerce certifies in writ-  
5 ing to Congress that the restriction is being applied  
6 in a manner that constitutes a means of arbitrary or  
7 unjustifiable discrimination between countries; and

8           (3) the Secretary of Health and Human Serv-  
9 ices certifies to Congress in writing that the restric-  
10 tion is not a reasonable means of protecting the pub-  
11 lic health.

12   (c) DEFINITION.—In this section, the term “arbi-  
13 trary or unjustifiable discrimination” means a restriction  
14 or proposed restriction by a foreign country that—

15           (1) is arbitrary or unjustifiable; and

16           (2) does not adhere to the principle of national  
17 treatment and applies less favorable treatment to  
18 goods that are imported into that country than the  
19 country applies to like goods that are the product,  
20 growth, or manufacture of that country.

21 **SEC. 802. WHISTLEBLOWER PROTECTIONS.**

22   (a) PROHIBITION OF REPRISALS.—An employee of  
23 any manufacturer, distributor, or retailer of a tobacco  
24 product may not be discharged, demoted, or otherwise dis-  
25 criminated against (with respect to compensation, terms,

1 conditions, or privileges of employment) as a reprisal for  
2 disclosing to an employee of the Food and Drug Adminis-  
3 tration, the Department of Health and Human Services,  
4 the Department of Justice, or any State or local regu-  
5 latory or enforcement authority, information relating to a  
6 violation of law related to this Act or a State or local law  
7 that furthers the purposes of this Act.

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

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

- 18 (1) reinstate the employee to the employee's  
19 former position;  
20 (2) pay compensatory damages; or  
21 (3) take other appropriate actions to remedy  
22 any past discrimination.

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



1 (1) deliberately causes or participates in the al-  
2 leged violation of law or regulation; or

3 (2) knowingly or recklessly provides substan-  
4 tially false information to the Food and Drug Ad-  
5 ministration, the Department of Health and Human  
6 Services, the Department of Justice, or any State or  
7 local regulatory or enforcement authority.

8 (e) APPLICATION OF FALSE CLAIMS ACT.—Section  
9 3730(d) of title 31, United States Code, shall apply with  
10 respect to any employee to which this section applies if  
11 the disclosure of such employee results in a payment of  
12 any fee or fine to the Federal Government by the manu-  
13 facturer, distributor or retailer involved, regardless of  
14 whether such employee ever commenced an action con-  
15 cerning the disclosure.

16 **SEC. 803. PROHIBITIONS RELATING TO TOBACCO PROD-**  
17 **UCTS AND CHILDREN.**

18 (a) IN GENERAL.—Chapter VIII of the Federal  
19 Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.)  
20 is amended by adding at the end the following:

21 **“SEC. 804. PROHIBITION ON SALE OR DISTRIBUTION OF TO-**  
22 **BACCO PRODUCTS TO CHILDREN.**

23 “(a) GENERAL RULE.—It shall be unlawful for any  
24 domestic concern or any officer, director, employee, or  
25 agent of such concern to make use of the mails or any

1 means or instrumentality of interstate commerce to cause  
2 or contribute, either directly or through a foreign subsidi-  
3 ary, joint venture, affiliate, or licensee, to—

4           “(1) the sale or distribution of tobacco products  
5           in a foreign country to children; or

6           “(2) the advertising or promotion of tobacco  
7           products in a foreign country in a manner that ap-  
8           peals to children.

9           “(b) INTERPRETATION.—For purposes of subsection  
10 (a), the advertising or promotion of tobacco products shall  
11 be considered to be in a manner that appeals to children  
12 if the advertising or promotion is carried out in a manner  
13 that would not be permissible under the regulations re-  
14 ferred to in section 202 of the Healthy Kids Act if it oc-  
15 curred in the United States.

16 **“SEC. 805. LABELING.**

17           “‘It shall be unlawful for any domestic concern or any  
18 officer, director, employee, or agent of such concern, either  
19 directly or through a foreign subsidiary, joint venture, af-  
20 filiate, or licensee, to make use of the mails or any means  
21 or instrumentality of interstate commerce to cause or con-  
22 tribute to the export from the United States or the sale  
23 or distribution in, or export from, any other country any  
24 tobacco product the package of which does not contain a  
25 warning label that—

1           “(1) is in the primary language or languages of  
2 the country in which the tobacco product is sold or  
3 distributed to consumers; and

4           “(2) except for the requirement of paragraph  
5 (1)—

6           “(A) complies with Federal requirements  
7 for labeling of similar tobacco products manu-  
8 factured, imported, or packaged for sale or dis-  
9 tribution in the United States; or

10           “(B) complies with the labeling require-  
11 ments of the foreign country in which the prod-  
12 uct is sold or distributed to consumers and  
13 which labeling requirements the Secretary de-  
14 termines are substantially similar to Federal re-  
15 quirements and are adequately enforced by such  
16 country.”.

17       (b) ENFORCEMENT.—Section 301 of the Federal  
18 Food, Drug, and Cosmetic Act (21 U.S.C. 331) as amend-  
19 ed by section 203(e), is further amended by adding at the  
20 end the following:

21           “(cc) To carry out an act made unlawful by section  
22 804 or 805.

23       (c) REWARD.—Section 303(b)(5) of the Federal  
24 Food, Drug, and Cosmetic Act (21 U.S.C. 333)(b)(5)) is  
25 amended by adding at the end the following: “If a person

1 provides information leading to the institution of a crimi-  
2 nal proceeding against, and conviction of, a person for a  
3 violation of section 301(cc), such person shall be entitled  
4 to one-half of the criminal fine imposed and collected for  
5 such violation but not more than \$125,000.”.

6 (d) DEFINITIONS.—Section 201 of the Federal Food,  
7 Drug, and Cosmetic Act (21 U.S.C. 321) as amended by  
8 section 203(a)(3), is further amended by adding at the  
9 end the following:

10 “(ll) The term ‘domestic concern’ means—

11 “(1).any individual who is a citizen, national, or  
12 resident of the United States; and

13 “(2) any corporation, partnership, association,  
14 joint-stock company, business trust, unincorporated  
15 organization, or sole proprietorship which has its  
16 principal place of business in the United States or  
17 which is organized under the laws of a State of the  
18 United States or a territory, possession, or common-  
19 wealth of the United States.

20 “(mm) The term ‘children’ means an individual under  
21 the age of 18.”.

22 **SEC. 804. PRESERVATION OF STATE AND LOCAL AUTHOR-**  
23 **ITY.**

24 Except as otherwise provided for in this Act (or an  
25 amendment made by this Act), nothing in this Act shall

1 be construed as prohibiting a State or political subdivision  
2 of a State from imposing requirements, prohibitions, pen-  
3 alties or other measures, whether by statute, rule, regula-  
4 tion, ordinance, judicial decree, consent decree, or settle-  
5 ment agreement, to further the purposes of this Act that  
6 are in addition to the requirements, prohibitions, or pen-  
7 alties required under this Act. Nothing in this Act (or an  
8 amendment made by this Act) shall preclude or deny the  
9 right of any State or political subdivision of a State to  
10 adopt or enforce any requirements, prohibitions, or pen-  
11 alties relating to tobacco products to the extent that such  
12 requirements, prohibitions or penalties are not less strin-  
13 gent than those required under this Act (or amendments).

14 **SEC. 806. SEVERABILITY.**

15 If any provision of this Act, an amendment made by  
16 this Act, or the application of such provision or amend-  
17 ment to any person or circumstance is held to be unconsti-  
18 tutional, the remainder of this Act, the amendments made  
19 by this Act, and the application of the provisions of such  
20 to any person or circumstance shall not be affected there-  
21 by.

1 **TITLE IX—PROVISIONS RELAT-**  
2 **ING TO NATIVE AMERICANS**

3 **SEC. 901. PROVISIONS RELATING TO NATIVE AMERICANS.**

4 (a) **IN GENERAL.**—The provisions of this Act (or an  
5 amendment made by this Act) shall apply to the manufac-  
6 ture, distribution, and sale of tobacco products in any area  
7 within the jurisdiction of an Indian tribe or tribal organi-  
8 zation.

9 (b) **RELIGIOUS PRACTICE EXCEPTION.**—In recogni-  
10 tion of the religious, traditional and ceremonial uses of  
11 tobacco and tobacco products by many Indian tribes and  
12 the members of such tribes, nothing in this Act (or and  
13 amendment made by this Act) shall be construed to in-  
14 fringe upon the rights of such tribes or members to trans-  
15 fer, acquire, possess, or use any tobacco or tobacco prod-  
16 ucts for such purposes. The preceding sentence shall only  
17 be construed to apply to those quantities of tobacco prod-  
18 ucts necessary to fulfill recognized religious, traditional or  
19 ceremonial purposes and not to permit the general market-  
20 ing of tobacco products not in compliance with chapter  
21 IX of the Federal Food, Drug and Cosmetic Act.

22 (c) **PAYMENTS TO TRUST FUND.**—Any Indian tribe  
23 or tribal organization that engages in the manufacturer  
24 of tobacco products shall be subject to liability for an as-  
25 sessment under section 102.

1 (d) APPLICATION OF FEDERAL FOOD, DRUG AND  
2 COSMETIC ACT REQUIREMENTS.—

3 (1) IN GENERAL.—The Secretary, in consulta-  
4 tion with the Secretary of the Interior, shall promul-  
5 gate regulations to provide for the application of any  
6 requirements of the Food, Drug and Cosmetic Act  
7 with respect to tobacco products manufactured, dis-  
8 tributed, or sold in any area within the jurisdiction  
9 of an Indian tribe or tribal organization as appro-  
10 priate to comply with subsections (a) and (b).

11 (2) ELIGIBILITY FOR ASSISTANCE.—Under the  
12 regulations promulgated under paragraph (1), the  
13 Secretary, after consultation with the Secretary of  
14 the Interior, may provide assistance to an Indian  
15 tribe or tribal organization in meeting and enforcing  
16 the requirements under such regulations if—

17 (A) the tribe or organization has a govern-  
18 ing body that has powers and carries out duties  
19 that are similar to the powers and duties of  
20 State or local governments and requests such  
21 assistance by application to the Secretary;

22 (B) the functions to be exercised through  
23 the use of such assistance relate to activities  
24 within the exterior boundaries of the reservation

1 or other areas within the jurisdiction of the  
2 tribe involved; and

3 (C) the tribe or organization is reasonably  
4 expected to be capable of carrying out the func-  
5 tions required by the Secretary.

6 (3) DETERMINATIONS.—The Secretary, in con-  
7 sultation with the Secretary of the Interior, shall  
8 make determinations concerning the eligibility of an  
9 Indian tribe or tribal organization for assistance  
10 under regulations under paragraph (1) not later  
11 than 90 days after the date on which such tribe or  
12 organization submits an application for such assist-  
13 ance.

14 (4) IMPLEMENTATION BY SECRETARY.—If the  
15 Secretary determines that the Indian tribe or tribal  
16 organization is not willing or qualified to administer  
17 the requirements of the regulations promulgated  
18 under this subsection, the Secretary, in consultation  
19 with the Secretary of the Interior, shall implement  
20 and enforce such regulations on behalf of the tribe  
21 or organization.

22 (e) RETAIL LICENSING REQUIREMENTS.—

23 (1) IN GENERAL.—The requirements of section  
24 577 of the Federal Food, Drug and Cosmetic Act  
25 (as added by section 204 of this Act) shall apply to



1       retailers that sell tobacco products in any area with-  
2       in the jurisdiction of an Indian tribe or tribal orga-  
3       nization.

4           (2) SELF-REGULATION.—In order to be eligible  
5       for funds under subsection (f), an Indian tribe or  
6       tribal organization shall implement a tribal licensing  
7       program within the exterior boundaries of the res-  
8       ervation and other areas within the jurisdiction of  
9       the tribe consistent with the regulations promulgated  
10      under section 577 of the Federal Food, Drug and  
11      Cosmetic Act.

12          (3) IMPLEMENTATION BY SECRETARY.—If the  
13      Secretary, in consultation with the Secretary of the  
14      Interior, determines that the Indian tribe or tribal  
15      organization is not qualified to administer the re-  
16      quirements of section 577 of the Federal Food,  
17      Drug and Cosmetic Act, the Secretary, in consulta-  
18      tion with the Secretary of the Interior, shall imple-  
19      ment such requirements on behalf of the tribe or or-  
20      ganization.

21          (f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

22           (1) IN GENERAL.—For each fiscal year the Sec-  
23      retary shall pay to each Indian tribe that has an ap-  
24      proved tribal anti-smoking plan a tribal grant for  
25      the fiscal year in an amount equal to the amount de-

1       terminated under paragraph (3), and shall reduce the  
2       amounts payable under section 111 to any State in  
3       which the service area or areas of the Indian tribe  
4       are located by the amount so determined.

5               (2) PLAN.—To be eligible to receive a payment  
6       under paragraph (1), an Indian tribe shall prepare  
7       and submit to the Secretary for approval an anti-  
8       smoking plan and shall otherwise meet the require-  
9       ments of subsection (e).

10              (3) AMOUNT DETERMINED.—The amount of  
11       any funds for which an Indian tribe is eligible under  
12       paragraph (1) shall be determined by the Secretary  
13       based on the ratio of the total number of Indians re-  
14       siding on such tribe's reservation or in areas within  
15       the jurisdiction of the tribe in the State to the total  
16       population of the State multiplied by the amount al-  
17       located to State under section 111.

18              (4) USE.—Amounts provided to a tribe or orga-  
19       nization under this paragraph shall be used to reim-  
20       burse the tribe for smoking-related health expendi-  
21       tures, to further the purposes of this Act, and in ac-  
22       cordance with a plan submitted by the tribe or orga-  
23       nization and approved by the Secretary as being in  
24       compliance with this Act. Tribes and tribal organiza-  
25       tions shall have the flexibility to utilize such

1       terminated under paragraph (3), and shall reduce the  
2       amounts payable under section 111 to any State in  
3       which the service area or areas of the Indian tribe  
4       are located by the amount so determined.

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8       smoking plan and shall otherwise meet the require-  
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12       paragraph (1) shall be determined by the Secretary  
13       based on the ratio of the total number of Indians re-  
14       siding on such tribe's reservation or in areas within  
15       the jurisdiction of the tribe in the State to the total  
16       population of the State multiplied by the amount al-  
17       located to State under section 111.

18          (4) USE.—Amounts provided to a tribe or orga-  
19       nization under this paragraph shall be used to reim-  
20       burse the tribe for smoking-related health expendi-  
21       tures, to further the purposes of this Act, and in ac-  
22       cordance with a plan submitted by the tribe or orga-  
23       nization and approved by the Secretary as being in  
24       compliance with this Act. Tribes and tribal organiza-  
25       tions shall have the flexibility to utilize such

1 amounts to meet the unique health needs of such  
2 tribes within the context of tribal health programs if  
3 such programs meet the fundamental Federal re-  
4 quirements under this Act as determined by the Sec-  
5 retary.

6 (5) REALLOTMENT.—Any amounts set-aside  
7 and not expended under this paragraph shall be re-  
8 allotted among other eligible tribes and organiza-  
9 tions.

10 (g) OBLIGATION OF MANUFACTURERS.—A partici-  
11 pating manufacturer shall not engage in any activity in  
12 an area within the jurisdiction of an Indian tribe or tribal  
13 organization that is prohibited under the Protocol.

14 (h) INDIAN HEALTH SERVICE.—Amounts made  
15 available under section 101(d)(5)(B) shall be provided to  
16 the Indian Health Service to be used for anti-tobacco-re-  
17 lated consumption and cessation activities including—

18 (1) clinic and facility design, construction, re-  
19 pair, renovation, maintenance and improvement;

20 (2) provider services and equipment;

21 (3) domestic and community sanitation associ-  
22 ated with clinic and facility construction and im-  
23 provement;

24 (4) inpatient and outpatient services; and

1 (5) other programs and services provided  
2 through the Indian Health Service or through tribal  
3 contracts, compacts, grants or cooperative agree-  
4 ments with the Indian Health Service and which are  
5 deemed appropriate to raising the health status of  
6 Indians.

7 (i) PREEMPTION.—

8 (1) GENERAL PREEMPTION.—Except as other-  
9 wise provided for in this section, nothing in this Act  
10 shall be construed as prohibiting an Indian tribe or  
11 tribal organization from imposing requirements, pro-  
12 hibitions, penalties or other measures to further the  
13 purposes of this Act that are in addition to the re-  
14 quirements, prohibitions, or penalties required under  
15 this Act.

16 (2) PUBLIC EXPOSURE TO SMOKE.—Nothing in  
17 the amendment made by title V shall be construed  
18 to preempt or otherwise affect any Indian tribe or  
19 tribal organization rule or practice that provides  
20 greater protection from the health hazards of envi-  
21 ronmental tobacco smoke.

22 (3) NATIVE AMERICANS.—A State may not im-  
23 pose obligations or requirements relating to the ap-  
24 plication of this Act to Indian tribes and tribal orga-  
25 nizations.