

NLWJC - Kagan

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**Tobacco-Settlement: New
Legislation-Hansen/Meehan**

Comparison of Tobacco Proposals
June 18, 1998

	McCain	Hansen-Meehan
Price Increase	\$1.10 over 5 years	\$1.50 over 3 years
Penalties: 1. Industry	\$40 million for the first five percentage points by which the industry misses the youth smoking reduction target, and \$120 million for each point missed thereafter. Penalties are capped at \$2 billion. (Durbin amendment).	None
2. Company Specific	\$80 million per percentage point for the first 5 percentage points, and \$24 million per percentage point thereafter. This figure represents approximately 2.5 times the forgone profits for the first five percentage points, and about 7.5 times the forgone profits for the next 19 percentage points. Penalties are capped at \$5 billion. (Durbin amendment).	Company penalties are based on the extent to which company misses youth smoking targets and the number of consecutive years in which company misses targets. In 1st year, 1 cent per pack for each point missed up to 10; 2 cents per pack for each point missed between 10 and 20; 3 cents per pack for each point missed over 20. In 2nd consecutive year, 2 cents per pack up to 10, 4 cents between 10 and 20, 6 cents over 20. In third consecutive year, same monetary penalties and no single pack sales; in fourth consecutive year, same as third year plus generic packaging.
Youth Smoking Reduction Targets	Reduces youth smoking by 67% over 10 years.	Reduces youth smoking by 80% over 10 years.
Full FDA Authority	Provides full authority in a separate title.	Provides full authority within existing drug and device title.
Advertising and Access Provisions	Codifies advertising and access provisions in the FDA rule and adds additional restrictions through a consent protocol.	Codifies advertising and access provisions in the FDA rule and adds all additional restrictions in McCain.

	McCain	Hansen-Meehan
Protections of Tobacco Farmers	Includes Sen. Ford's LEAF Act which includes compensation (buyout and/or subsidies) for producers; continues a price support program. Also contains a competing proposal by Senator Lugar to end the subsidy program.	None
Comprehensive Plan to Use Tobacco Revenue to Protect Public Health and Assist Children	After revenues are deducted from the tobacco trust fund for a tax cut (see below), revenues would be divided as follows: 22% for medical research; 22% for public health efforts; 40% for the states (half unrestricted and half for designated purposes); and 16% for farmers. The Coverdell amendment expanded public health efforts to include anti-drug efforts (see below). Half of designated state funds must be used for child care (Kerry-Bond amendment).	Revenues would go toward smoking cessation/public health programs (approx. 10%), payments to states (approx. 35%), and reducing federal debt (approx. 55%).
Environmental Tobacco Smoke Provision	Includes provisions to protect against environmental tobacco smoke: allows states to opt out only if they have state laws that are equally protective. Exempts the hospitality industry (e.g., bars, restaurants).	Includes provisions to protect against environmental tobacco smoke, without allowing states to opt out. Exempts bars, but not restaurants.
Liability Protections for Industry:		
1. Liability Cap	None (Gregg amendment struck the \$8 billion cap).	None
2. Bar on Class Actions	None	None
3. Bar on Punitive Damages	None	None

	McCain	Hansen-Meehan
Anti-drug Provisions	At their option, states could use their restricted funds for Substance Abuse Treatment and Prevention programs and Safe and Drug Free Schools; authorizes a number of drug programs that will compete with public health funding for counteradvertising, smoking cessation, licensing and enforcement (Coverdell amendment).	None
Cap on Attorneys Fees	Set by court, but cannot exceed: \$4000 per hour for actions filed before 12/31/94, \$2000 per hour for actions filed between 12/31/94 and 4/1/97, \$1000 per hour for actions filed between 4/1/97 and 6/15/98, and \$500 for actions filed after 6/15/98	None
Tax Cut	Gramm amendment would provide tax relief to married couples earning less than \$50,000, and a health insurance tax cut for the self-employed. Cost: \$16 billion over 4 years, \$30 billion over following 5 years, and one-third of tobacco trust fund revenues (plus other non-tobacco funds) thereafter. (If youth smoking targets are met and youth smoking declines by 67% over the next decade, the tax cut can use one-half, rather than one-third, of the tobacco trust fund dollars.)	None

Tob - set - new legislation -
Lauren - Mackinnon



"McCann, Bill" <Bill.McCann@mail.house.gov>
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Record Type: Record

To: Laura Emmett/WHO/EOP

cc:

Subject: as discussed

Elena,

Briefly, we have shifted direction in terms of how to spend the money. We are still going to send roughly half the funds to the states. We are going to fund an aggressive anti-tobacco package of programs (counter-advertising campaign, school based prevention and education, smoking cessation, etc.) that we are working on with Drs. Koop and Kessler. The remainder of funds we will direct towards federal debt reduction -- to offset arguments/criticisms that this is just another tax and spend proposal.

Bill McCann, 225-0870

PS -- that was a great piece in the New Republic.



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DRAFT

THE BIPARTISAN TOBACCO CONTROL ACT

The Bipartisan Tobacco Control Act is comprehensive tobacco legislation that is aimed exclusively at preventing children from smoking and reducing the health toll of tobacco.

The bill contains the full set of measures recommended by the Koop-Kessler Commission: a substantial price increase to discourage youth smoking; full FDA jurisdiction; company-specific youth reduction goals; a national education campaign and other prevention initiatives; restrictions on environmental tobacco smoke; international tobacco control; and an accountability board to disclose documents and oversee future industry conduct.

The bill does not fund extraneous federal programs. The majority of the funds raised through the price increase are dedicated to reducing the federal debt. The funds that are not used for debt reduction are used only to fund tobacco control programs or to make payments to states to settle the state lawsuits.

The bill does not include any special liability protections for the tobacco industry.

Title I -- Price Increase to Discourage Youth Smoking. Health experts say that one of the most effective ways to reduce youth smoking is to raise the price of tobacco products. For this reason, title I increases the price of a pack of cigarettes by \$1.50 over three years. Except for funding for federal tobacco control efforts and payments to states, all funds raised are dedicated to reducing the federal debt.

Title II -- FDA Jurisdiction. Title II validates the FDA tobacco regulation and gives FDA authority to regulate tobacco products as a drug or device. In addition, the title directs FDA to revise its regulations to implement key portions of the tobacco settlement proposed by the tobacco industry and the state attorney generals, including the additional restrictions on marketing and advertising (to the extent permitted by the First Amendment), new warning labels, and regulation of ingredients. States are directed to establish programs to license tobacco retailers, and provisions of current law that preempt state and local tobacco regulation are repealed.

Title III -- Youth Reduction Goals. Title III establishes a performance-based program to reduce tobacco use by children. Each tobacco manufacturer is given the goals of reducing the percentage of children using its tobacco products by 33% in three years, 50% in five years, 67% in seven years, and 80% in ten years. Unlike other proposals, there is no "penalty" if a manufacturer fails to achieve these goals. Instead, the failure of a manufacturer to achieve a goal on its own triggers additional measures designed to reduce the number of children using the manufacturer's tobacco products. The additional measures include additional price increases (beginning at 1 cent per pack per percentage point missed) and additional access and marketing restrictions.

Title IV -- Environmental Tobacco Smoke. Title IV requires public facilities to adopt smoke-free policies. Under these policies, the owner or operator of a public facility must either prohibit smoking or restrict smoking to specially ventilated smoking areas. The definition of public facility includes any building in which activities substantially affecting interstate commerce occur, except for residential buildings, bars, tobacco shops, private clubs, and prisons.

Title V -- Prevention and Education Initiatives. Title V funds essential federal tobacco prevention and education initiatives. The programs funded include a national education campaign to discourage tobacco use, tobacco-related health research, and FDA enforcement. These tobacco-related programs are the only federal programs funded under the bill. In total, they will use less than ___% of the funds raised through the price increase.

Title VI -- International Tobacco Control. Title VI establishes an international "code of conduct" that prohibits U.S. tobacco companies and their foreign affiliates from marketing to children in other countries in ways that would be prohibited in the U.S. The title also imposes a 2 cents a pack fee on tobacco products manufactured and sold abroad by U.S. tobacco companies and their affiliates and uses these funds to support international tobacco control efforts.

Title VII -- Tobacco Accountability Board. Title VII establishes a Tobacco Accountability Board within the Department of Health and Human Services. Modeled after the National Transportation and Safety Board, the

Accountability Board is given subpoena and other investigative authorities. The Board has no regulatory responsibility. Its primary function is to report to Congress and the public on the tobacco industry's future conduct. The Board will also have responsibility for managing a depository of tobacco industry documents.

Title VIII -- Resolution of State Lawsuits. Title VIII gives states the option of settling their tobacco lawsuits in exchange for receiving a share of the funds raised by the price increase. A portion of these funds will be used for state and local tobacco control efforts.

[DISCUSSION DRAFT]

MAY 14, 1998

105TH CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. HANSEN (for himself and Mr. MEEHAN) introduced the following bill;
which was referred to the Committee on _____

A BILL

To prevent children from using tobacco products, to reduce
the health costs attributable to tobacco products, and
for other purposes.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Bipartisan NO Tobacco for Children Act of 1998”.

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

1 **TITLE I—PRICE INCREASE TO**
2 **DISCOURAGE CHILD TO-**
3 **BACCO USE**

4 **SEC. 101. POLICY.**

5 Funds raised by this title shall be used to reduce the
6 public debt, except as provided in title V (relating to to-
7 bacco prevention and education initiatives) and VIII (re-
8 lating to payments to States).

9 **SEC. 102. PAYMENTS BY TOBACCO MANUFACTURERS.**

10 (a) **INITIAL PAYMENT.**—Not later than 60 days after
11 the date of enactment of this Act, the Secretary shall as-
12 sess each manufacturer \$10,000,000,000 multiplied by
13 the manufacturer's share of the total number of tobacco
14 products manufactured or imported in the United States
15 in 1997. Each manufacturer shall pay the assessment to
16 the United States Treasury not later than 90 days after
17 the date of the enactment of this Act.

18 (b) **ANNUAL PAYMENTS.**—By March 31 of each year
19 beginning in 1999, each manufacturer shall pay to the
20 United States Treasury the following amounts:

21 (1) 1999.—For tobacco products manufactured
22 or imported in the United States during calendar
23 year 1999, \$0.50 per unit.

1 (2) 2000.—For tobacco products manufactured
2 or imported in the United States during calendar
3 year 2000, \$1.00 per unit.

4 (3) 2001 and thereafter.—For tobacco products
5 manufactured or imported in the United States dur-
6 ing calendar year 2001 and thereafter, \$1.50 per
7 unit.

8 (c) INFLATION ADJUSTMENT.—The amount of any
9 payment under subsection (b) shall be increased by the
10 percentage increase in the Consumer Price Index for all
11 urban consumers (all items, U.S. city average) from 1998
12 to the year before the year in which the payment is due.

13 (d) EXPORTS.—This section shall not apply to to-
14 bacco products manufactured or imported in the United
15 States for export.

16 **SEC. 103. GENERAL PROVISIONS.**

17 (a) FAILURE TO PAY.—If a manufacturer fails to
18 make a payment required under section 102 by the date
19 such payment is due, the Attorney General shall recover
20 the amount of the payment (plus interest at 1.5 times the
21 prevailing rate) in an action brought in an appropriate dis-
22 trict court of the United States.

23 (b) REGULATIONS.—

1 (1) PROMULGATION.—The Secretary may pro-
2 mulgate regulations to implement the requirements
3 of this title.

4 (2) COMPLIANCE.—An action may be brought
5 by the Secretary in an appropriate district court of
6 the United States to enjoin any failure to comply
7 with regulations under paragraph (1) or to impose
8 a civil penalty for such failure to comply of not more
9 than \$25,000 per day.

10 (c) DEFINITION.—For purposes of this title, the term
11 “Secretary” means the Secretary of the Treasury.

12 **TITLE II—FDA JURISDICTION**
13 **OVER TOBACCO PRODUCTS**

14 **SEC. 201. REFERENCE.**

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

20 **SEC. 202. DEFINITIONS.**

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

1 (b) DEVICES.—Section 201(h) (21 U.S.C. 321(h)) is
2 amended by adding at the end the following: “Such term
3 includes a tobacco product.”

4 (c) OTHER DEFINITIONS.—Section 201 (21 U.S.C.
5 321) is amended by adding at the end the following:

6 “(kk) The term ‘tobacco product’ means any product
7 made or derived from tobacco that is intended for human
8 consumption.”

9 **SEC. 203. AMENDMENTS TO CHAPTER V.**

10 (a) MISBRANDING.—Section 502 (21 U.S.C. 360) is
11 amended by adding at the end the following:

12 “(u) In the case of a tobacco product, if it does not
13 comply with a requirement under subchapter F.”

14 (b) CLARIFICATION OF AUTHORITY.—Section 520(e)
15 (21 U.S.C. 360j(e)) is amended by adding at the end the
16 following:

17 “(3) In the case of tobacco products, the restrictions
18 on sale and distribution authorized by paragraph (1) shall
19 include restrictions on advertising and promotion of to-
20 bacco products.”

21 (c) PREEMPTION.—Section 521(a) (21 U.S.C.
22 360k(a)) is amended—

23 (1) by striking “Except as provided in sub-
24 section (b)” and inserting “Except in the case of to-

1 bacco products and as provided in subsection (b)”;
2 and

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

4 “TOBACCO PRODUCTS

5 “(e) If the package or advertisement of a tobacco
6 product is required to bear a warning under this Act, no
7 statement relating to the use of the tobacco product and
8 health, other than a statement required under this Act,
9 may be required by any State or local statute or regulation
10 to be included on any package or in any advertisement
11 of such tobacco product.”.

12 **SEC. 204. VALIDATION OF THE FDA RULE.**

13 (a) IN GENERAL.—All provisions of the regulations
14 related to tobacco products promulgated by the Secretary
15 of Health and Human Services on August 28, 1996 (61
16 Fed. Reg. 44396) shall be considered to be lawful, and
17 to have been lawfully promulgated, under the Federal
18 Food, Drug, and Cosmetic Act.

19 (b) EFFECTIVE DATE.—Provisions of such regula-
20 tions which are not in effect on the date of the enactment
21 of this Act shall take effect upon the expiration of 9
22 months after such date.

23 **SEC. 205. SPECIAL PROVISIONS FOR TOBACCO PRODUCTS.**

24 Chapter V is amended by adding at the end the fol-
25 lowing:

1 **“Subchapter F—Special Provisions for**
2 **Tobacco Products**

3 **“SEC. 565. SPECIAL STANDARD FOR TOBACCO PRODUCTS.**

4 “In the case of tobacco products, an action that pro-
5 vides appropriate protection of public health shall be
6 deemed to provide a reasonable assurance of safety and
7 effectiveness.

8 **“SEC. 566. IMPLEMENTATION OF THE PROPOSED RESOLU-**
9 **TION.**

10 “(a) **ADDITIONAL RESTRICTIONS ON MARKETING,**
11 **ADVERTISING, AND ACCESS.**—Not later than 18 months
12 after the date of the enactment of this subchapter, the
13 Secretary shall revise the regulations related to tobacco
14 products promulgated by the Secretary on August 28,
15 1996 (61 Fed. Reg. 44396) to include the additional re-
16 strictions on marketing, advertising, and access described
17 in Title IA and Title 1C of the Proposed Resolution en-
18 tered into by the tobacco manufacturers and the State at-
19 torneys general on June 20, 1997, except that the Sec-
20 retary shall not include an additional restriction on mar-
21 keting or advertising in such regulations if its inclusion
22 would violate the First Amendment to the Constitution.

23 “(b) **WARNINGS.**—

24 “(1) **CIGARETTES AND SMOKELESS TOBACCO.**—

25 Not later than 18 months after the date of the en-

1 actment of this subchapter, the Secretary shall pro-
2 mulgate regulations to require warnings on cigarette
3 and smokeless tobacco labeling and advertisements.
4 The content, format, and rotation of warnings shall
5 conform to the specifications described in Title IB of
6 the Proposed Resolution entered into by the tobacco
7 manufacturers and the State attorneys general on
8 June 20, 1997.

9 “(2) PROHIBITION.—It shall be unlawful to ad-
10 vertise tobacco products on any medium of electronic
11 communication subject to the jurisdiction of the
12 Federal Communications Commission.

13 “(c) INGREDIENTS.—

14 “(1) IN GENERAL.—Not later than 18 months
15 after the date of enactment of this subchapter, the
16 Secretary shall promulgate regulations relating to
17 ingredients in tobacco products. Except as provided
18 in paragraph (2), such regulations shall conform to
19 the specifications described in Title IF of the Pro-
20 posed Resolution entered into by the tobacco manu-
21 facturers and the State attorneys general on June
22 20, 1997.

23 “(2) FAILURE TO ACT.—If the Secretary fails
24 to approve or disapprove an ingredient’s safety with-
25 in the review period prescribed under the regulations

1 under paragraph (1), such failure shall not be con-
2 sidered an approval of such ingredient.

3 “(d) **REDUCED-RISK PRODUCTS.**—No manufacturer
4 of a tobacco product may state or imply in the labeling
5 or advertisements of the tobacco product that the tobacco
6 product presents a reduced risk to health unless the Sec-
7 retary has determined that the tobacco product does
8 present a significantly reduced risk to health.

9 “(e) **OTHER AUTHORITY.**—This section does not
10 limit the authority the Secretary has under other provi-
11 sions of this Act with respect to tobacco products.

12 **“SEC. 567. STATE TOBACCO CONTROL PROGRAMS.**

13 “(a) **IN GENERAL.**—Effective 2 years after the date
14 of the enactment of this subchapter, a State may not re-
15 ceive a grant under subtitle B of title VIII of the Biparti-
16 san NO Tobacco for Children Act of 1998 unless the State
17 has put into law a State tobacco control program that con-
18 forms to the model State program established by the Sec-
19 retary under subsection (b).

20 “(b) **MODEL STATE PROGRAM.**—

21 “(1) **GENERAL RULE.**—Within one year of the
22 date of the enactment of this subchapter, the Sec-
23 retary shall establish a model State tobacco control
24 program.

1 “(2) PROGRAM CONTENT.—The model State to-
2 bacco control program established under paragraph
3 (1) shall—

4 “(A) require persons who sell tobacco
5 products to individuals for personal consump-
6 tion to obtain a license from the State ;

7 “(B) require licensed retailers to comply
8 with the requirements under this Act that are
9 applicable to tobacco product retailers;

10 “(C) prohibit any individual from purchas-
11 ing tobacco products for resale or distribution
12 to individuals under the age of 18;

13 “(D) include minimum requirements for
14 the conduct and frequency of compliance in-
15 spections of licensed retailers;

16 “(E) include State performance objectives,
17 including objectives for reducing the level of vio-
18 lations observed during compliance inspections;

19 “(F) include provisions for appropriate
20 penalties for violations of the program require-
21 ments, including provisions for license suspen-
22 sion and revocation; and

23 “(G) include such other provisions as the
24 Secretary determines are appropriate to protect
25 public health.

1 “(c) FAILURE TO IMPLEMENT.—If a State fails to
2 effectively implement a State tobacco control program
3 which conforms to the Model State program established
4 under subsection (b) or if a State fails to achieve the per-
5 formance objectives applicable to the State under the
6 Model State program, the Secretary shall withhold up to
7 20 percent of the grant to the State under subtitle B of
8 title VIII of the Bipartisan NO Tobacco for Children Act
9 of 1998.

10 “(d) FEDERAL LICENSING PROGRAM.—Within one
11 year of the date of the enactment of this subchapter, the
12 Secretary shall establish Federal licensing requirements
13 for—

14 “(1) tobacco product retailers operating on
15 Federal property;

16 “(2) tobacco product retailers operating in a
17 State which does not put into law or effectively im-
18 plement a State tobacco control program which con-
19 forms to the Model State Program; and

20 “(3) such other tobacco product retailers as the
21 Secretary may specify.

22 The Federal tobacco control requirements shall conform
23 to the licensing requirements of the Model State Program.

24 “(e) FEDERAL AUTHORITY.—The Secretary may
25 order a retailer licensed by a State to suspend or cease

1 selling tobacco products if the tobacco product retailer is
2 in violation of a requirement under this Act related to to-
3 bacco products.

4 “(f) INDIAN TRIBES.—In the case of tobacco product
5 retailers operating on Indian reservations, the governing
6 Indian tribe or tribal organization shall be treated as a
7 State.”.

8 **SEC. 206. GENERAL PROVISIONS**

9 (a) ENFORCEMENT.—Section 301 (21 U.S.C. 331) is
10 amended by adding at the end the following:

11 “(aa) The violation of any requirement under this Act
12 relating to tobacco products.”.

13 (b) ACCESS TO INFORMATION.—Section 701 (21
14 U.S.C 371) is amended by adding at the end the following:

15 “(h) To acquire information related to tobacco prod-
16 ucts, the Secretary may administer oaths and require the
17 testimony of witnesses and the production of documents
18 and other materials. The Secretary may disclose to the
19 public information acquired under this subsection if the
20 Secretary determines that disclosure is appropriate to pro-
21 tect public health.”.

22 **SEC. 207. REPEAL.**

23 The Federal Cigarette Labeling and Advertising Act
24 (15 U.S.C. 1331 et seq.) and the Comprehensive Smoke-
25 less Tobacco Health Education Act of 1986 (15 U.S.C.

1 4401 et seq.) are repealed on the date the regulations de-
2 scribed in section 566(b) of the Federal Food, Drug, and
3 Cosmetic Act take effect.

4 **TITLE III—PERFORMANCE OB-**
5 **JECTIVES TO REDUCE CHILD**
6 **TOBACCO USE**

7 **SEC. 301. ANNUAL PERFORMANCE SURVEYS.**

8 Within 1 year after the date of the enactment of this
9 Act and annually thereafter the Secretary shall conduct
10 a survey to determine for each manufacturer the percent-
11 age of children who use a tobacco product of the manufac-
12 turer.

13 **SEC. 302. PERFORMANCE OBJECTIVES.**

14 (a) **PERFORMANCE OBJECTIVES FOR EXISTING**
15 **MANUFACTURERS.**—Each existing manufacturer shall
16 have as a performance objective the reduction of its child
17 tobacco use level below its baseline level by at least the
18 following percentage of its baseline level:

19 (1) In the third and fourth annual performance
20 surveys, 33 percent.

21 (2) In the fifth and sixth annual performance
22 surveys, 50 percent.

23 (3) In the seventh, eighth, and ninth annual
24 performance surveys, 67 percent.

1 (4) In the tenth and each succeeding annual
2 performance survey, 80 percent.

3 However, in no case is the performance objective for a
4 manufacturer to reduce its child tobacco use level below
5 the de minimis level.

6 (b) PERFORMANCE OBJECTIVES FOR NEW MANU-
7 FACTURERS.—Beginning with the third annual perform-
8 ance survey, a new manufacturer shall have as its per-
9 formance objective maintaining its child tobacco use level
10 at no more than the de minimis level.

11 (c) LEVELS.—For purposes of this title:

12 (1) BASELINE LEVEL.—The baseline level of
13 each manufacturer is the manufacturer's child to-
14 bacco use level determined in the first annual per-
15 formance survey.

16 (2) DE MINIMIS LEVEL.—The de minimis level
17 is 0.5 percent of children.

18 **SEC. 303. ADDITIONAL MEASURES TO REDUCE CHILD TO-**
19 **BACCO USE.**

20 (a) SECRETARIAL DETERMINATION.—Before the end
21 of the third year after the date of the enactment of this
22 Act and annually thereafter, the Secretary shall, based on
23 the annual performance survey conducted for such year,
24 determine if each manufacturer has achieved the applica-
25 ble performance objective under section 302. The Sec-

1 retary shall publish in the Federal Register such deter-
2 mination and any additional measures required under this
3 section.

4 (b) **FAILURE TO ACHIEVE.**—If the Secretary deter-
5 mines under subsection (a) that a manufacturer has failed
6 to achieve the applicable performance objective for an an-
7 nual performance survey, the additional measures speci-
8 fied in this section shall be required to further reduce the
9 manufacturer's child tobacco use level.

10 (c) **FIRST FAILURE.**—If the Secretary determines
11 under subsection (a) that a manufacturer has failed to
12 achieve the applicable performance objective for an annual
13 performance survey and the manufacturer did not so fail
14 with respect to the prior survey, the manufacturer shall
15 for each unit of its tobacco products increase the price
16 it charges by—

17 (1) \$0.01 for each of the first 10 percentage
18 points by which the manufacturer fails to achieve its
19 performance objective; plus

20 (2) \$0.02 for each of the second 10 percentage
21 points, if any, by which the manufacturer fails to
22 achieve its performance objective; plus

23 (3) \$0.03 for each additional percentage point
24 over 21, if any, by which the manufacturer fails to
25 achieve its performance objective.

1 (d) SECOND FAILURE.—If the Secretary determines
2 under subsection (a) that a manufacturer has failed to
3 achieve the applicable performance objective for an annual
4 performance survey and such failure is the manufacturer's
5 second consecutive failure, the manufacturer shall for each
6 unit of its tobacco products increase the price it charges
7 by twice the level required under subsection (c).

8 (e) THIRD FAILURE.—If the Secretary determines
9 under subsection (a) that a manufacturer has failed to
10 achieve the applicable performance objective for an annual
11 performance survey and such failure is the manufacturer's
12 third consecutive failure, the following additional measures
13 shall apply:

14 (1) The manufacturer shall for each unit of its
15 tobacco products increase the price it charges by the
16 level prescribed by subsection (d).

17 (2) No retailer may sell the tobacco products of
18 the manufacturer in quantities smaller than a car-
19 ton.

20 (f) FOURTH AND SUCCESSIVE FAILURES.—If the
21 Secretary determines under subsection (a) that a manu-
22 facturer has failed to achieve the applicable performance
23 objective for an annual performance survey and such fail-
24 ure is the manufacturer's fourth or more consecutive fail-
25 ure, the following additional measures shall apply:

1 (1) The manufacturer shall for each unit of its
2 tobacco products increase the price it charges by the
3 level prescribed by subsection (d).

4 (2) No retailer may sell the tobacco products of
5 the manufacturer in quantities smaller than a car-
6 ton.

7 (3) The manufacturer may package its tobacco
8 products only in packages that bear only black text
9 on a white background except for warning labels
10 that are required to appear in a different format.

11 (g) EFFECTIVE DATES.—

12 (1) PRICE INCREASES.—If the Secretary deter-
13 mines under subsection (a) that a manufacturer has
14 failed to achieve the applicable performance objective
15 for an annual performance survey, the price increase
16 that is required under this section as a result of
17 such determination shall apply to each unit of its to-
18 bacco products manufactured or imported in the
19 United States during the 12-month period beginning
20 30 days after the determination, except that such
21 price increase shall not apply to tobacco products
22 that are manufactured or imported by the manufac-
23 turer for export.

24 (2) NON-MONETARY MEASURES.—The Sec-
25 retary shall by regulation prescribe an effective date

1 that is as expeditious as practicable for the non-
2 monetary additional measures described in sub-
3 sections (e) and (f). Such measures shall remain in
4 effect until the Secretary determines under sub-
5 section (a) that the manufacturer has achieved the
6 applicable performance objective for an annual per-
7 formance survey.

8 (h) ADJUSTMENTS.—

9 (1) GENERAL RULE.—The amount of any price
10 increase that is required under this section shall be
11 increased by the percentage increase in the
12 Consumer Price Index for all urban consumers (all
13 items, U.S. city average) from 1998 to the year be-
14 fore the year in which the price increase takes effect.

15 (2) LIMITATION.—The maximum price increase
16 that shall be required under this section for a unit
17 of a tobacco product is \$2 plus an adjustment for
18 inflation under paragraph (1).

19 (i) CALCULATION OF PERCENTAGE POINTS.—For
20 purposes of determining the level of price increase under
21 this section, the number of percentage points by which a
22 manufacturer fails to achieve a performance objective shall
23 be calculated as follows:

24 (1) MANUFACTURER WITH CHILD TOBACCO USE
25 LEVEL AT OR BELOW ITS BASELINE LEVEL.—If the

1 manufacturer is an existing manufacturer which has
2 a baseline level above the de minimis level and a
3 child tobacco use level equal to or below its baseline
4 level, the number of percentage points shall equal
5 the difference between the percentage reduction in
6 its child tobacco use level required to meet the appli-
7 cable performance objective and the percentage re-
8 duction in its child tobacco use level achieved by the
9 manufacturer.

10 (2) MANUFACTURER WITH CHILD TOBACCO USE
11 LEVEL ABOVE ITS BASELINE LEVEL.—If the manu-
12 facturer is an existing manufacturer which has a
13 baseline level above the de minimis level and a child
14 tobacco use level above its baseline level, the number
15 of percentage points shall equal the sum of the per-
16 centage reduction in its child tobacco use level re-
17 quired to meet the applicable performance objective
18 and the percentage by which its child tobacco use
19 level exceeds its baseline level.

20 (3) EXISTING MANUFACTURER WITH A BASE-
21 LINE LEVEL BELOW THE DE MINIMIS LEVEL OR
22 NEW MANUFACTURER.—If the manufacturer is an
23 existing manufacturer which has a baseline level
24 below the de minimis level or if the manufacturer is
25 a new manufacturer, the number of percentage

1 points shall equal the percentage by which its child
2 tobacco use level exceeds the de minimis level.

3 **SEC. 304. PROCEEDS OF PRICE INCREASES.**

4 (a) PAYMENT.—A manufacturer that is required to
5 increase prices under section 303 shall pay into an account
6 in the United States Treasury an amount equal to the
7 amount of the increase multiplied by the number of units
8 of the product to which the increase is required to be ap-
9 plied under such section. Such amount shall be paid by
10 a manufacturer on a quarterly basis within 30 days after
11 the end of each quarter in which the price increase is in
12 effect.

13 (b) USE OF FUNDS.—Funds in the account referred
14 to in subsection (a) shall be available to the Secretary,
15 without fiscal year limitation, to enforce this title and
16 other laws relating to tobacco use by children and for pub-
17 lic education and other initiatives designed to discourage
18 children from using tobacco products and products de-
19 scribed in section 306(b)(2).

20 **SEC. 305. JUDICIAL REVIEW.**

21 (a) IN GENERAL.—An action of the Secretary under
22 this title is not subject to judicial review until the Sec-
23 retary has made or failed to make a compliance determina-
24 tion under section 303(a) that has adversely affected the
25 person seeking the review. An action for review may only

1 be brought in the United States District Court for the Dis-
2 trict of Columbia. In an action seeking review of such de-
3 termination the person seeking review—

4 (1) shall have the burden of demonstrating the
5 actual reduction of the manufacturer's child tobacco
6 use level; and

7 (2) may prevail only to the extent that the per-
8 son demonstrates that such reduction is different
9 than the reduction the Secretary used in making
10 such determination.

11 (b) NO STAY.—Section 705 of title 5, United States
12 Code, shall not apply with respect to any action under sub-
13 section (a).

14 (c) INTEREST.—If the judgment of a court in an ac-
15 tion under subsection (a) results in the reduction of a pay-
16 ment paid by a manufacturer under section 304, the man-
17 ufacturer shall be paid from the account referred to in
18 such section an amount equal to the amount of such re-
19 duction and interest on such amount. If the judgment of
20 a court in an action under subsection (a) results in the
21 increase in the amount to be paid by a manufacturer
22 under section 304, the manufacturer shall pay to such ac-
23 count an amount equal to the amount of such increase
24 and interest on such amount.

1 **SEC. 306. GENERAL PROVISIONS.**

2 (a) **ENFORCEMENT.**—Section 301 of the Federal
3 Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amend-
4 ed by adding at the end the following:

5 “(bb) The failure to comply with a requirement under
6 section 303, 304, 305, or 306 of Bipartisan NO Tobacco
7 for Children Act of 1998.”

8 (b) **REGULATIONS.**—

9 (1) **GENERAL RULE.**—The Secretary may pro-
10 mulgate regulations for the implementation of this
11 title.

12 (2) **ADDITIONAL AUTHORITY.**—For products
13 (other than cigarettes and smokeless tobacco) made
14 or derived from tobacco that are intended for human
15 consumption the Secretary may by regulation estab-
16 lish performance objectives under section 302 relat-
17 ing to the use of such products by children and may
18 require additional measures under section 303 for
19 failure to achieve the objectives.

20 (c) **ADMINISTRATION OF SURVEYS.**—

21 (1) **STATISTICAL ACCURACY OF SURVEYS.**—The
22 annual performance surveys conducted by the Sec-
23 retary under section 301(a) shall be designed so that
24 if a manufacturer had a child tobacco use level that
25 is equal to 50 percent, the 95 percent confidence in-

1 interval would be no greater than plus or minus 1 per-
2 centage point.

3 (2) SURVEY CONDITIONS.—The annual per-
4 formance surveys shall—

5 (A) be household-based surveys; and

6 (B) not be subject to State or local regula-
7 tion or chapter 35 of title 44, United States
8 Code.

9 (3) CONFIDENTIALITY.—The Secretary shall
10 not disclose information that may identify a child
11 surveyed in an annual performance survey unless the
12 child (or the child's parent or guardian) has con-
13 sented to such disclosure.

14 (4) TECHNICAL ADJUSTMENTS.—The Secretary
15 may make technical adjustments in the manner in
16 which annual performance surveys are conducted if
17 adjustments are made to insure that the results of
18 the surveys are comparable from year to year.

19 **SEC. 307. USE OF TOBACCO PRODUCTS AMONG MINORITY**
20 **POPULATIONS.**

21 As part of each annual survey, the Secretary shall
22 determine the child tobacco use level for children of dif-
23 ferent racial and ethnic backgrounds. If the Secretary de-
24 termines that the child tobacco use level is increasing, or
25 is not decreasing at a proportionate rate, among children

1 of a racial or ethnic background, the Secretary shall report
2 such determination to Congress along with recommenda-
3 tions for reducing such level for children of such racial
4 or ethnic background.

5 **SEC. 308. DEFINITIONS.**

6 For purposes of this title:

7 (1) ANNUAL PERFORMANCE SURVEY.—The
8 term “annual performance survey” means a survey
9 conducted by the Secretary annually under section
10 301.

11 (2) CHILDREN.—The term “children” means
12 individuals under the age of 18 and above the age
13 of 11 who are residents of the United States.

14 (3) CHILD TOBACCO USE LEVEL.—The term
15 “child tobacco use level” means, with respect to a
16 manufacturer and an annual performance survey,
17 the percentage of children who use the manufactur-
18 er’s tobacco products as determined in an annual
19 performance survey or under section 305(a)

20 (4) EXISTING MANUFACTURER.—The term “ex-
21 isting manufacturer” means a manufacturer which
22 manufactured or imported a tobacco product on or
23 before the date of the enactment of this Act.

1 (5) NEW MANUFACTURER.—The term “new
2 manufacturer” means any manufacturer other than
3 an existing manufacturer.

4 (6) TOBACCO PRODUCT.—The term “tobacco
5 product” means a cigarette or smokeless tobacco.

6 (7) USE.—A child shall be considered to use a
7 manufacturer’s tobacco product if the manufactur-
8 er’s tobacco product is the usual brand of tobacco
9 product used by the child in the last 30 days.

10 **TITLE IV—SMOKE-FREE**
11 **ENVIRONMENTS**

12 **SEC. 401. SMOKE-FREE ENVIRONMENT POLICY.**

13 (a) POLICY REQUIRED.—In order to protect children
14 and adults from cancer, respiratory disease, heart disease,
15 and other adverse health effects from breathing environ-
16 mental tobacco smoke, the responsible entity for each pub-
17 lic facility shall adopt and implement at such facility a
18 smoke-free environment policy which meets the require-
19 ments of subsection (b).

20 (b) ELEMENTS OF POLICY.—Each smoke-free envi-
21 ronment policy for a public facility shall—

22 (1) prohibit the smoking of cigarettes, cigars,
23 and pipes, and any other combustion of tobacco,
24 within the facility and on facility property within the

1 immediate vicinity of the entrance to the facility;
2 and

3 (2) post a clear and prominent notice of the
4 smoking prohibition in appropriate and visible loca-
5 tions at the public facility.

6 The policy may provide an exception to the prohibition
7 specified in paragraph (1) for one or more specially des-
8 ignated smoking areas within a public facility if such area
9 or areas meet the requirements of subsection (c).

10 (c) SPECIALLY DESIGNATED SMOKING AREAS.—A
11 specially designated smoking area meets the requirements
12 of this subsection if it satisfies each of the following condi-
13 tions:

14 (1) The area is ventilated in accordance with
15 specifications promulgated by the Administrator that
16 insure that air from the area is directly exhausted
17 to the outside and does not recirculate or drift to
18 other areas within the public facility.

19 (2) Nonsmoking individuals do not have to
20 enter the area for any purpose while smoking is oc-
21 ccurring.

22 (3) Children are prohibited from entering the
23 area.

1 **SEC. 402. CITIZEN ACTIONS.**

2 (a) **IN GENERAL.**—An action may be brought to en-
3 force the requirements of this title by any aggrieved per-
4 son, any State or local government agency, or the Admin-
5 istrator.

6 (b) **VENUE.**—Any action to enforce this title may be
7 brought in any district court of the United States for the
8 district in which the defendant resides or is doing business
9 to enjoin any violation of this title or to impose a civil
10 penalty for any such violation in the amount of not more
11 than \$5,000 per day of violation. The district courts shall
12 have jurisdiction, without regard to the amount in con-
13 troversy or the citizenship of the parties, to enforce this
14 title and to impose civil penalties under this title.

15 (c) **NOTICE.**—An aggrieved person shall give any al-
16 leged violator notice of at least 60 days prior to commenc-
17 ing an action under this section. No action may be com-
18 menced by an aggrieved person under this section if such
19 alleged violator complies with the requirements of this title
20 within such 60-day period and thereafter.

21 (d) **COSTS.**—The court, in issuing any final order in
22 any action brought pursuant to this section, may award
23 costs of litigation (including reasonable attorney and ex-
24 pert witness fees) to any prevailing party, whenever the
25 court determines such award is appropriate.

1 (e) PENALTIES.—The court in any action under this
2 section to apply civil penalties shall have discretion to
3 order that such civil penalties be used for projects which
4 further the policies of this title. The court shall obtain the
5 view of the Administrator in exercising such discretion and
6 selecting any such projects.

7 (f) DAMAGES.—No damages of any kind, whether
8 compensatory or punitive, shall be awarded in actions
9 brought pursuant to this title.

10 (g) ISOLATED INCIDENTS.—Violations of the prohibi-
11 tion specified in section 401(b)(1) by an individual within
12 a facility or on facility property shall not be considered
13 violations of this title on the part of the responsible entity
14 if such violations—

15 (1) are isolated incidents that are not part of
16 a pattern of violations of such prohibition; and

17 (2) are not authorized by the responsible entity.

18 **SEC. 403. REGULATIONS.**

19 (a) IN GENERAL.—The Administrator is authorized
20 to promulgate such regulations as the Administrator
21 deems necessary to carry out this title.

22 (b) OTHER FACILITIES.—The Administrator may by
23 regulation extend the requirement of section 401 to adopt
24 and implement a smoke-free environment policy to the fa-
25 cilities described in subparagraphs (B) through (E) of sec-

1 tion 404(2) if the Administrator determines that such an
2 action is appropriate to protect the public health.

3 **SEC. 404. DEFINITIONS.**

4 As used in this title:

5 (1) ADMINISTRATOR.—The term “Adminis-
6 trator” means the Administrator of the Environ-
7 mental Protection Agency.

8 (2) PUBLIC FACILITY.—The term “public facil-
9 ity” means any building in which activities substan-
10 tially affecting interstate commerce occur, including
11 any such building owned by or leased to a Federal,
12 State, or local government entity. Such term shall
13 not include—

14 (A) any portion of a building regularly
15 used for residential purposes;

16 (B) any commercial establishment engaged
17 primarily in the sale of alcoholic beverages for
18 consumption on the premises;

19 (C) any private club while in use for social
20 or fraternal activities that are not open to the
21 public;

22 (D) any jail or other prison facility; and

23 (E) any commercial establishment pri-
24 marily engaged in the sale of tobacco and to-
25 bacco related products.

1 (3) RESPONSIBLE ENTITY.—The term “respon-
2 sible entity” means, with respect to any facility, the
3 owner of such facility, except that in the case of any
4 such facility or portion thereof which is leased, such
5 term means the lessee.

6 **SEC. 405. PREEMPTION.**

7 Nothing in this title shall preempt or otherwise affect
8 any other Federal, State or local law which provides pro-
9 tection from health hazards from environmental tobacco
10 smoke.

11 **SEC. 406. EFFECTIVE DATE.**

12 The requirements of this title shall take effect on the
13 date one year after the date of the enactment of this Act.

14 **TITLE V-TOBACCO PREVENTION**
15 **AND EDUCATION INITIATIVES**

16 **SEC. 501. NATIONAL EDUCATION CAMPAIGN.**

17 From funds paid to the United States Treasury
18 under section 102(b) in each year there shall be made
19 available to the Secretary, without fiscal year limitation,
20 \$500,000,000 for a national public education campaign to
21 discourage the use of tobacco products.

22 **SEC. 502. FEDERAL IMPLEMENTATION.**

23 From funds paid to the United States Treasury
24 under section 102(b) in each year there shall be made
25 available to the Secretary, without fiscal year limitation,

1 \$300,000,000 for the implementation and enforcement
2 of—

3 (1) the provisions of the Federal Food, Drug,
4 and Cosmetic Act relating to tobacco products;

5 (2) the requirements of title III.

6 (3) the provisions of this Act relating to the To-
7 bacco Accountability Board

8 **SEC. 503. TOBACCO USE CESSATION.**

9 (a) PROGRAMS AND ACTIVITIES.—From funds paid
10 to the United States Treasury under section 102(b) in
11 each year there shall be made available to the Secretary,
12 without fiscal year limitation, \$200,000,000 for tobacco
13 use cessation programs. Such programs shall be programs
14 which the Secretary finds either are consistent with the
15 most recent tobacco use cessation guidelines issued by the
16 Agency for Health Care Policy and Research or are ap-
17 proved as safe and effective by the Secretary acting
18 through the Food and Drug Administration.

19 (b) GRANTS.—The Secretary shall use funds made
20 available under subsection (a) to make grants for tobacco
21 use cessation programs to—

22 (1) Federally-qualified health centers as defined
23 in section 1905(l)(2)(B) of the Social Security Act
24 (42 U.S.C. 1396d(l)(2)(B));

1 (2) rural health clinics as defined in section
2 1905(l)(1) of the Social Security Act (42 U.S.C.
3 1396(l)(1)); and

4 (3) other public and nonprofit entities that de-
5 liver primary care funded under the Public Health
6 Service Act.

7 **SEC. 504. RESEARCH AND SURVEILLANCE.**

8 From funds paid to the United States Treasury
9 under section 102(b) in each year there shall be made
10 available to the Secretary, without fiscal year limitation,
11 \$1,000,000,000 to fund—

12 (1) research related to nicotine addiction, to-
13 bacco use cessation, prevention of the use of tobacco
14 products, and other tobacco related matters; and

15 (2) surveillance and epidemiology research re-
16 lated to tobacco.

17 **SEC. 505. MINORITY POPULATIONS.**

18 The Secretary shall ensure that—

19 (1) the national education campaign funded
20 under section 501,

21 (2) the tobacco use cessation programs funded
22 under section 503, and

23 (3) the research and surveillance funded under
24 section 504,

25 take into account the needs of minority populations.

1 **SEC. 506. INFLATION ADJUSTMENT.**

2 Each of the amounts made available to the Secretary
3 under sections 501, 502, 503, and 504 shall be increased
4 by the percentage increase in the Consumer Price Index
5 for all urban consumers (all items, U.S. city average) from
6 1998 to the year before the year in which such amount
7 is made available.

8 **TITLE VI-INTERNATIONAL**
9 **TOBACCO CONTROL**

10 **SEC. 601. SALE, DISTRIBUTION, AND ADVERTISING OF TO-**
11 **BACCO PRODUCTS IN FOREIGN COUNTRIES.**

12 (a) **AMENDMENT TO CHAPTER VIII.**—Chapter VIII
13 of the Federal Food, Drug, and Cosmetic Act is amended
14 by adding at the end the following:

15 **“SEC. 804. SALE, DISTRIBUTION, AND ADVERTISING OF TO-**
16 **BACCO PRODUCTS IN FOREIGN COUNTRIES.**

17 **“(a) REGULATIONS.**—Not later than 2 years after
18 the date of the enactment of this section, the Secretary
19 shall promulgate regulations to—

20 **“(1)** prohibit domestic concerns from selling or
21 distributing tobacco products in a foreign country
22 without warning labels that are appropriate to pro-
23 tect public health in such country;

24 **“(2)** prohibit domestic concerns from—

25 **“(A)** selling or distributing tobacco prod-
26 ucts in a foreign country to children; or

1 “(B) advertising or promoting tobacco
2 products in a foreign country in a manner that
3 appeals to children;

4 “(3) require domestic concerns to ensure that
5 any person under the control of a domestic concern
6 does not engage in conduct that would be prohibited
7 under this section if engaged in by the domestic con-
8 cern; and

9 “(4) require domestic concerns to take all fea-
10 sible measures to ensure that tobacco products bear-
11 ing a brand name controlled or used by a domestic
12 concern are not sold, distributed, advertised, or pro-
13 moted in a manner that would be prohibited under
14 this section if engaged in by a domestic concern.

15 “(b) INTERPRETATION.—For purposes of this sec-
16 tion, advertising or promoting tobacco products in a man-
17 ner that would not be lawful under this Act if it occurred
18 in the United States shall be deemed to be advertising or
19 promotion that appeals to children.

20 “(c) DEFINITION.—The term ‘domestic concern’
21 means—

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

24 “(2) any corporation, partnership, association,
25 joint-stock company, business trust, unincorporated

1 organization, or sole proprietorship which has its
2 principal place of business in the United States or
3 which is organized under the laws of a State of the
4 United States or a territory, possession, or common-
5 wealth of the United States.”.

6 (b) ENFORCEMENT.—Section 301 of the Federal
7 Food, Drug, and Cosmetic Act (21 U.S.C 331), as amend-
8 ed by section 306) is amended by adding at the end the
9 following:

10 “(cc) The violation of any requirement under section
11 804.”.

12 **SEC. 602. PROHIBITION ON FEDERAL EFFORTS TO PRO-**
13 **MOTE TOBACCO EXPORTS.**

14 (a) IN GENERAL.—No officer, employee, department,
15 or agency of the United States may—

16 (1) promote or encourage the export, re-export,
17 sale, manufacture, advertising, promotion, distribu-
18 tion, or use of tobacco or tobacco products to or in
19 a foreign country; or

20 (2) seek, through negotiation or otherwise, the
21 removal or reduction by any foreign country of any
22 restriction or proposed restriction in that country on
23 the importation, export, re-export, sale, manufac-
24 ture, advertising, promotion, distribution, packaging,

1 labeling, use, content, imposition of tariffs, or tax-
2 ation, of tobacco or tobacco products.

3 (b) EXCEPTION.—Subsection (a)(2) shall not apply
4 to any restriction or proposed restriction by a foreign
5 country if—

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

9 (2) the Secretary of Commerce certifies in writ-
10 ing to Congress that the restriction is being applied
11 in a manner that constitutes a means of arbitrary or
12 unjustifiable discrimination between countries; and

13 (3) the Secretary of Health and Human Serv-
14 ices certifies to Congress in writing that the restric-
15 tion is not a reasonable means of protecting the pub-
16 lic health.

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

20 (1) is arbitrary or unjustifiable; and

21 (2) does not adhere to the principle of national
22 treatment and applies less favorable treatment to
23 goods that are imported into that country than the
24 country applies to like goods that are the product,
25 growth, or manufacture of that country.

1 **SEC. 603. INTERNATIONAL TOBACCO CONTROL TRUST**
2 **FUND.**

3 (a) **ESTABLISHMENT.**—There is established in the
4 United States Treasury an International Tobacco Control
5 Trust Fund which shall be funded by payments collected
6 under section 605.

7 (b) **USE OF TRUST FUND.**—Funds from the Inter-
8 national Tobacco Control Trust Fund shall be available
9 for use as follows:

10 (1) **AMERICAN CENTER ON GLOBAL HEALTH**
11 **AND TOBACCO.**—\$150,000,000 shall be available,
12 without fiscal year limitation, each year for the
13 American Center on Global Health and Tobacco.

14 (2) **HEALTH AND HUMAN SERVICES.**—The Sec-
15 retary may, without fiscal year limitation, use funds
16 from the International Tobacco Control Trust Fund
17 to fund grants and other forms of assistance to for-
18 eign governments, nongovernment organizations, and
19 international organizations to support tobacco con-
20 trol activities in foreign countries.

21 (3) **ENFORCEMENT.**—The Secretary may use
22 funds from the International Tobacco Control Trust
23 Fund for enforcement of any requirement related to
24 the sale, distribution, marketing, or promotion of to-
25 bacco products in foreign countries.

1 **SEC. 604. AMERICAN CENTER ON GLOBAL HEALTH AND TO-**
2 **BACCO.**

3 (a) **ESTABLISHMENT.—**

4 (1) **IN GENERAL.—**There is established in the
5 District of Columbia a private, nonprofit corporation
6 to be known as the American Center on Global
7 Health and Tobacco (in this section referred to as
8 “ACT”). ACT shall assist organizations in foreign
9 countries to reduce and prevent the use of tobacco
10 products. Activities that ACT shall support shall in-
11 clude—

12 (A) public education campaigns to discour-
13 age the use of tobacco products;

14 “(B) community and school-based pro-
15 grams to discourage the use of tobacco prod-
16 ucts; and

17 “(C) other public health activities related
18 to tobacco products.

19 (2) **LEGAL STATUS.—**ACT shall

20 (A) not be an agency or establishment of
21 the United States; and

22 (B) except as otherwise provided in this
23 section, be subject to, and have all the powers
24 conferred upon a nonprofit corporation by, the
25 District of Columbia Nonprofit Corporation Act
26 (D.C. Code section 29-501 et seq.).

1 (b) GOVERNING BOARD.—

2 (1) APPOINTMENTS.—ACT shall be governed by
3 a board of trustees appointed by the Secretary on
4 the basis of expertise in tobacco control, public edu-
5 cation campaigns, international affairs, and other
6 relevant fields. The Secretary shall appoint the ini-
7 tial members of the board within 90 days of the date
8 of the enactment of this Act.

9 (2) TERMS.—The term of office of a member of
10 the board shall be 6 years, except that (as des-
11 ignated by the Secretary) of the members first ap-
12 pointed by the Secretary one-third of the members
13 shall have a term of 2 years and another one-third
14 of the members shall have a term of 4 years.

15 (c) AUDITS.—The accounts of ACT shall be audited
16 annually in accordance with generally accepted auditing
17 standards by independent certified public accountants.

18 (d) REPORT.—Not later than December 31 of each
19 year, ACT shall submit an annual report to Congress. The
20 report shall include a report of ACT's operations, activi-
21 ties, financial condition, and accomplishments under this
22 section and may include such recommendations as ACT
23 deems appropriate.

1 **SEC. 605. ASSESSMENT ON TOBACCO PRODUCTS MANUFAC-**
2 **TURED IN A FOREIGN COUNTRY.**

3 (a) **ASSESSMENT.**—By March 31 of each year begin-
4 ning in 1999, each domestic concern that manufactures
5 tobacco products in a foreign country or that controls a
6 person that manufactures tobacco products in a foreign
7 country shall pay to the International Tobacco Control
8 Trust Fund \$0.05 per unit of tobacco product manufac-
9 tured by the domestic concern (or a person controlled by
10 the domestic concern) in a foreign country in the prior
11 year.

12 (b) **FAILURE TO PAY.**—If a manufacturer fails to
13 make a payment required under this title by the date such
14 payment is due, the Attorney General shall recover the
15 amount of the payment (plus interest at 1.5 times the pre-
16 vailing rate) in an action brought in an appropriate dis-
17 trict court of the United States.

18 (c) **REGULATIONS.**—

19 (1) **PROMULGATION.**—The Secretary of the
20 Treasury may promulgate regulations to implement
21 the requirements of this section.

22 (2) **COMPLIANCE.**—An action may be brought
23 by the Secretary of the Treasury in an appropriate
24 district court of the United States to enjoin any fail-
25 ure to comply with regulations under paragraph (1)

1 or to impose a civil penalty for such failure to com-
2 ply of not more than \$25,000 per day.

3 (d) DEFINITION.—The term “domestic concern”
4 means—

5 (1) any individual who is a citizen, national, or
6 resident of the United States; and

7 (2) any corporation, partnership, association,
8 joint-stock company, business trust, unincorporated
9 organization, or sole proprietorship which has its
10 principal place of business in the United States or
11 which is organized under the laws of a State of the
12 United States or a territory, possession, or common-
13 wealth of the United States.

14 **SEC. 606. PREVENTION OF TOBACCO SMUGGLING.**

15 Chapter VIII of the Federal Food, Drug, and Cos-
16 metic Act (as amended by section 601) is amended by add-
17 ing at the end the following:

18 **“SEC. 805. PREVENTION OF TOBACCO SMUGGLING.**

19 “Not later than 2 years after the date of the enact-
20 ment of this Act, the Secretary of the Treasury, in con-
21 sultation with the Secretary of Health and Human Serv-
22 ices, shall promulgate regulations to reduce, to the maxi-
23 mum extent feasible, the smuggling of tobacco products
24 in interstate and foreign commerce. Such regulations may

1 include licensing, labeling, bonding, and other appropriate
2 requirements.”.

3 **SEC. 607. SENSE OF CONGRESS.**

4 It is the sense of Congress that the United States
5 government should support the development, adoption,
6 and implementation of the International Framework Con-
7 vention on Tobacco Control through all available re-
8 sources, including direct financial support, technical as-
9 sistance, and any other appropriate measure.

10 **TITLE VII-TOBACCO**
11 **ACCOUNTABILITY BOARD**

12 **SEC. 701. TOBACCO ACCOUNTABILITY BOARD.**

13 (a) **ESTABLISHMENT.**—There is established an inde-
14 pendent board to be known as the Tobacco Accountability
15 Board.

16 (b) **MEMBERSHIP.**—The Board shall consist of 5
17 members with expertise relating to tobacco and public
18 health. The members, including the chair, shall be ap-
19 pointed by the Secretary of Health and Human Services.
20 The initial members of the Board shall be appointed by
21 the Secretary within 30 days of the date of the enactment
22 of this Act. A member of the Board may be removed by
23 the Secretary only for neglect of duty or malfeasance in
24 office.

1 (c) TERMS.—The term of office of a member of the
2 Board shall be 6 years, except that the members first ap-
3 pointed shall have terms of 2, 3, 4, and 5 years, respec-
4 tively, as determined by the Secretary.

5 **SEC. 702. DISCLOSURE OF TOBACCO INDUSTRY DOCU-**
6 **MENTS.**

7 (a) SUBMISSION BY MANUFACTURERS.—Not later
8 than 3 months after the date of the enactment of this Act
9 and thereafter as required by the Board, each tobacco
10 manufacturer shall submit to the Board a copy of all docu-
11 ments in the manufacturer's possession—

12 (1) relating to—

13 (A) any health effects, including addiction,
14 caused by the use of tobacco products;

15 (B) the manipulation or control of nicotine
16 in tobacco products; or

17 (C) the sale or marketing of tobacco prod-
18 ucts to children; or

19 (2) produced, or ordered to be produced, by the
20 tobacco manufacturer in the case entitled State of
21 Minnesota v. Philip Morris, Inc, Civ. Action No. C1-
22 94-8565 (Ramsey County, Minn.).

23 (b) DISCLOSURE BY THE BOARD.—Not later than 9
24 months after the date of the enactment of this Act and
25 thereafter as required by the Board, the Board shall, sub-

1 ject to subsection (c), make available to the public the doc-
2 uments submitted under subsection (a). Documents made
3 public by the Board shall be considered authenticated with
4 the same legal status as the original in any court ac-
5 tion related to tobacco products.

6 (c) PROTECTION OF TRADE SECRETS.—The Board
7 shall not disclose information that is entitled to protection
8 as a trade secret unless the Board determines that disclo-
9 sure of such information is appropriate to protect the pub-
10 lic health. This subsection shall not prevent the disclosure
11 of relevant information to Federal agencies or to commit-
12 tees of the Congress.

13 **SEC. 704. INVESTIGATION AND ANNUAL REPORTS.**

14 The Board shall investigate all matters relating to to-
15 bacco products and public health and report annually on
16 the results of the investigation to Congress. Each annual
17 report to Congress shall, at a minimum, disclose—

18 (1) any efforts by tobacco manufacturers to
19 conceal research relating to the adverse health ef-
20 fects or addiction caused by the use of tobacco prod-
21 ucts;

22 (2) any efforts by tobacco manufacturers to
23 mislead the public or any Federal, State, or local
24 elected body, agency, or court about the adverse

1 health effects or addiction caused by the use of to-
2 bacco products;

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

5 (4) any efforts by tobacco manufacturers to cir-
6 cumvent, repeal, modify, impede the implementation
7 of, or prevent the adoption of, any Federal, State,
8 or local law or regulation related to tobacco prod-
9 ucts.

10 **SEC. 705. AUTHORITIES.**

11 The Board, any member of the Board, or staff des-
12 igned by the Board may hold hearings, administer oaths,
13 require the testimony or deposition of witnesses, the pro-
14 duction of documents, or the answering of interrogatories,
15 or, upon presentation of the proper credentials, enter and
16 inspect facilities.

17 **SEC. 706. ENFORCEMENT.**

18 Any action may be brought by the Board in an appro-
19 priate district court of the United States to enjoin any
20 failure to comply with an requirement under this title or
21 to impose a civil penalty for such failure to comply of not
22 more than \$25,000 per day

23 **SEC. 707. ADMINISTRATION.**

24 (a) **STAFF.**—The Chair shall exercise the executive
25 and administrative functions of the Board and shall have

1 the authority to hire such staff as may be necessary for
2 the operation of the Board.

3 (b) SALARIES.—The members of the Board shall re-
4 ceive such salary and benefits as the Secretary deems nec-
5 essary, except that the salary of the Chair shall not be
6 less than level III of the Executive Schedule (5 U.S.C.
7 5314).

8 **SEC. 708. WHISTLEBLOWER PROTECTIONS.**

9 (a) PROHIBITION OF REPRISALS.—An individual may
10 not be discharged, demoted, or otherwise discriminated
11 against as a reprisal for disclosing to the Board, the Food
12 and Drug Administration, the Department of Health and
13 Human Services, the Department of Justice, the Con-
14 gress, or any State or local authority information relating
15 to a violation of law related to tobacco products.

16 (b) ENFORCEMENT.—Any individual who believes
17 that such individual has been discharged, demoted, or oth-
18 erwise discriminated against in violation of subsection (a)
19 may file a civil action in an appropriate district court of
20 the United States before the end of the 2-year period be-
21 ginning on the date of such discharge, demotion, or dis-
22 crimination.

23 (c) REMEDIES.—If the district court determines that
24 a violation of subsection (a) has occurred, the court may
25 order—

1 (1) the reinstatement of the individual to the
2 individual's former position;

3 (2) payment of compensatory damages; or

4 (3) any other appropriate action.

5 (d) LIMITATION.—The protections of this section
6 shall not apply to any individual who—

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

9 (2) knowingly or recklessly provides substan-
10 tially false information to the Board, the Food and
11 Drug Administration, the Department of Health and
12 Human Services, the Department of Justice, or any
13 State or local authority.

14 (e) APPLICATION OF FALSE CLAIMS ACT.—Section
15 3730(d) of title 31, United States Code, shall apply with
16 respect to any individual to which this section applies if
17 the disclosure of such individual results in a payment of
18 any fee or fine to the Federal Government, regardless of
19 whether such individual ever commenced an action con-
20 cerning the disclosure.

21 **SEC. 709. DEFINITIONS.**

22 For purposes of this title:

23 (1) BOARD.—The term "Board" means the To-
24 bacco Accountability Board.

1 (2) TOBACCO MANUFACTURER.—The term “to-
2 bacco manufacturer” means—

3 (A) any manufacturer as defined in title
4 IX; or

5 (B) the Tobacco Institute, the Council for
6 Tobacco Research, the Smokeless Tobacco
7 Council, the Center for Indoor Air Research, or
8 any other trade association or entity that is pri-
9 marily funded by persons who manufacture or
10 import a tobacco product.

11 **TITLE VIII—PAYMENTS TO**
12 **STATES**
13 **Subtitle A—Resolution of State**
14 **Actions**

15 **SEC. 801. STATE ELECTIONS.**

16 (a) IN GENERAL.—Any State may elect to receive
17 payments under section 802 in lieu of seeking recovery
18 from manufacturers for health care costs attributable to
19 the use of tobacco products. Any such election must be
20 submitted by the Governor of the State to the Secretary
21 of the Treasury within one year after the date of the en-
22 actment of this Act.

23 (b) EFFECT OF ELECTION.—

24 (1) LIMITATION.—Except as provided in para-
25 graph (2), if a State elects to receive payments

1 under section 802, the State may not seek recovery
2 from manufacturers for health care costs attrib-
3 utable to the use of tobacco products.

4 (2) FUTURE AND CRIMINAL CONDUCT.—The
5 limitation in paragraph (1) shall not apply to civil
6 actions based on conduct by a manufacturer that oc-
7 curs after the date of the enactment of this Act or
8 to criminal prosecutions.

9 **SEC. 802. PAYMENTS TO STATES.**

10 (a) AMOUNT.—If a State elects to receive payments
11 under this section, the Secretary of the Treasury shall,
12 within 90 days of such election and annually thereafter,
13 pay from the United States Treasury to the State the
14 amount that the State would have received under the Pro-
15 posed Resolution entered in by the manufacturers and the
16 State attorneys general on June 20, 1997.

17 (b) LOCAL GOVERNMENTS.—A State that receives a
18 payment under subsection (a) shall pass through to local
19 governments within the State a portion of the payments
20 if the local governments incurred health care costs attrib-
21 utable to the use of tobacco products. The portion of the
22 payments passed through to a local government shall be
23 proportionate to the portion of the health care costs attrib-
24 utable to the use of tobacco products incurred by the local
25 government. A State that fails to pass through payments

1 to local governments as required by this subsection shall
2 not be eligible to receive future payments under subsection
3 (a).

4 **SEC. 803. EXEMPT MANUFACTURERS.**

5 (a) **EXEMPTION.**—A manufacturer described in sub-
6 section (b) shall not be assessed—

7 (1) that portion of an annual payment under
8 section 102(b) that is attributable to the manufac-
9 ture of cigarettes and that will be provided to States
10 under this title; or

11 (2) an initial payment under section 102(a).

12 (b) **MANUFACTURER.**—A manufacturer described in
13 this subsection is a manufacturer that has—

14 (1) resolved tobacco-related civil actions with
15 more than 25 States before January 1, 1998,
16 through written settlement agreements; and

17 (2) provided to all other States by not later
18 than December 31, 1998, the opportunity to enter
19 into written settlement agreements that are substan-
20 tially similar to such agreements and that provide
21 such other States with the most favorable annual
22 payment terms in such agreements.

23 (c) **LIMITATION.**—The provisions of subsection (b)(2)
24 shall apply only to the extent that the cigarettes manufac-
25 tured by the manufacturer constitute less than 3 percent

1 of all cigarettes manufactured or imported in the applica-
2 ble calendar year.

3 **Subtitle B-State Grants**

4 **SEC. 811. EDUCATION AND PREVENTION PROGRAMS.**

5 (a) FUNDS.—

6 (1) SCHOOL-BASED PROGRAMS.—From funds
7 paid to the United States Treasury under section
8 102(b) in each year there shall be made available to
9 the Secretary, without fiscal year limitation,
10 \$200,000,000 to make grants to States to carry out
11 school-based programs concerning the dangers of
12 using tobacco products.

13 (2) COMMUNITY-BASED PROGRAMS.—From
14 funds paid to the United States Treasury under sec-
15 tion 102(b) in each year there shall be made avail-
16 able to the Secretary, without fiscal year limitation,
17 \$400,000,000 to make grants to States to carry out
18 community-based programs on the prevention of the
19 use of tobacco products.

20 (b) ELIGIBILITY.—

21 (1) APPLICATIONS.—To be eligible to receive a
22 grant under subsection (a) a State shall prepare and
23 submit to the Secretary an application at such time,
24 in such manner, and containing such information as
25 the Secretary may require.

1 (2) STATE PLANS.—To be approved by the Sec-
2 retary an application under paragraph (1) shall in-
3 clude a State plan for carrying out the grant applied
4 for. A State plan shall include—

5 (A) a description of the types of programs
6 the State will fund with its grant;

7 (B) the manner in which the State will en-
8 sure that the plan includes programs directed
9 toward low-income communities and programs
10 directed toward individuals who are members of
11 racial and ethnic minority groups;

12 (C) the manner in which the State will en-
13 sure that programs funded by a grant will be
14 age appropriate, culturally appropriate, and lin-
15 guistically appropriate for the target popu-
16 lation.

17 (D) the manner in which the State will
18 monitor the effectiveness of programs under its
19 grant; and

20 (E) the manner in which the State will en-
21 sure that local entities and public health offi-
22 cials are involved in the planning and imple-
23 mentation of programs under its grant.

1 (3) ADDITIONAL REQUIREMENTS.—To be eligi-
2 ble to receive a grant under subsection (a) a State
3 shall also—

4 (A) annually report to the Secretary on the
5 effectiveness of the programs implemented by
6 the State under its grant;

7 (B) provide for independent periodic peer
8 review to evaluate and assess the quality and
9 appropriateness of the programs under its
10 grant; and

11 (C) submit to the Secretary the results of
12 reviews under subparagraph (B) and annual re-
13 ports containing such information as the Sec-
14 retary may require in order to enable the Sec-
15 retary to monitor the activities of the State
16 under its grant and its plan submitted with its
17 application.

18 (c) NONCOMPLIANCE BY STATE WITH RESPECT TO
19 EVALUATIONS AND REPORTS.—Beginning with the 3d
20 year for which a State has in effect a plan under sub-
21 section (b)(2), the Secretary shall, before making a grant
22 based on such plan, make a determination as to whether
23 the State has satisfactorily met the requirements for data,
24 evaluations, and other conditions agreed to by the State
25 in its plan in effect for the previous year. If, after provid-

1 ing notice and opportunity for a hearing, the Secretary
2 determines the State is not in compliance with such re-
3 quirements for such previous year, the Secretary may re-
4 duce the amount grants under this section for the State
5 for the succeeding year by up to 40 percent.

6 (d) ADMINISTRATIVE EXPENSES.—Not more than 10
7 percent of a grant under subsection (a) for a year may
8 be expended by a State for administrative expenses for the
9 grant.

10 **SEC. 812. REIMBURSEMENT OF STATES FOR MEDICAID EX-**
11 **PENSES**

12 (a) AMENDMENT.—Section 1903 of the Social Secu-
13 rity Act (42 U.S.C. 1396b) is amended—

14 (1) in subsection (a)(7), by striking the period
15 and inserting “; plus”;

16 (2) in subsection (a), by adding after paragraph
17 (7) the following:

18 “(8) an amount equal to 90 percent of the
19 sums expended during the quarter which are attrib-
20 utable to the costs of offering, arranging, and fur-
21 nishing (directly or on a contract basis) of approved
22 tobacco use cessation programs.”; and

23 (3) in subsection (b), by adding at the end the
24 following new paragraph:

1 “(6) For purposes of subsection (a)(8), the term ‘ap-
2 proved tobacco use cessation programs’ means those pro-
3 grams which the Secretary finds either are consistent with
4 the most recent tobacco use cessation guidelines issued by
5 the Agency for Health Care Policy and Research or ap-
6 proved as safe and effective for cessation by the Secretary
7 acting through the Food and Drug Administration.”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 subsection (a) shall apply to expenditures for services fur-
10 nished under an approved tobacco use cessation program
11 beginning April 1, 1999.

12 **Subtitle B—Resolution of State** 13 **Actions**

14 **TITLE IX-DEFINITIONS**

15 **SEC. 901. DEFINITIONS.**

16 Except as otherwise provided, in this Act:

17 (1) MANUFACTURER.—The term “manufac-
18 turer” means any person who manufactures or im-
19 ports a tobacco product.

20 (2) PERSON.—The term “person” means an in-
21 dividual, partnership, corporation, parent corpora-
22 tion, or any other business or legal entity or succes-
23 sor in interest of any such person.

24 (3) SECRETARY.—The term “Secretary” means
25 the Secretary of Health and Human Services.

1 (4) STATE.—The term “State” includes the
2 several States, the District of Columbia, the Com-
3 monwealth of Puerto Rico, Guam, the Virgin Is-
4 lands, American Samoa, the Northern Mariana Is-
5 lands, and any other territory or possession of the
6 United States. Such term includes any political divi-
7 sion of any State.

8 (5) TOBACCO PRODUCT.—The term “tobacco
9 product” means any product made of or derived
10 from tobacco that is intended for human consump-
11 tion.

12 (6) UNIT.—The term “unit” means 20 ciga-
13 rettes in the case of cigarettes and a comparable
14 amount as determined by the Secretary or the Sec-
15 retary of the Treasury in the case of other tobacco
16 products.