

NLWJC - Kagan

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**Tobacco-Settlement: New
Legislation-Harkin/Chafee [2]**

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

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

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

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

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

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

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

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

5 (c) ALLOCATION OF FUNDS.—

6 (1) POPULATION-BASED DETERMINATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (2) 25 percent of such amounts shall be used
13 to supplement amounts available for Federal or
14 State tobacco product enforcement purposes; and

15 (3) 25 percent of such amounts shall be used
16 to supplement amounts available for other commu-
17 nity-based programs under this subtitle.

18 (f) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated amounts provided under
20 section 101(d)(2)(B) to carry out this section.

21 (g) SUNSET.—The program established under this
22 section shall terminate on the date that is 10-years after
23 the date of enactment of this Act.

1 **CHAPTER 2—COUNTER-ADVERTISING**
2 **PROGRAMS**

3 **SEC. 311. FEDERAL-STATE COUNTER-ADVERTISING PRO-**
4 **GRAMS.**

5 (a) **IN GENERAL.**—The Secretary, acting through the
6 Centers for Disease Control and Prevention, shall carry
7 out programs to reduce tobacco usage through media-
8 based (such as counter-advertising campaigns) and
9 nonmedia-based education, prevention and cessation cam-
10 paigns designed to discourage the use of tobacco products
11 by individuals, to encourage those who use such products
12 to quit, and to educate the public about the hazards of
13 exposure to environmental tobacco smoke. Such programs
14 shall include national and local campaigns and shall target
15 those populations that have been targeted by tobacco in-
16 dustry advertising.

17 (b) **ESTABLISHMENT OF BOARD.**—

18 (1) **IN GENERAL.**—The Secretary shall establish
19 within the executive branch a board to be known as
20 the “Anti-Tobacco Public Education Board” (re-
21 ferred to in this section as the “Board”) to enter
22 into contracts with or award grants to eligible enti-
23 ties for the development and dissemination of public
24 informational and educational campaigns and mes-
25 sages to reduce the use of tobacco products.

1 (2) COMPOSITION.—The Board shall be com-
2 posed of—

3 (A) 7 non-Federal members to be ap-
4 pointed by the Secretary, of which—

5 (i) at least 3 such members shall be
6 individuals who are widely recognized by
7 the general public for cultural, educational,
8 behavioral science or medical achievement;

9 (ii) at least 2 of whom shall be indi-
10 viduals who hold positions of leadership in
11 major public health organizations; and

12 (iii) at least 2 of whom shall be indi-
13 viduals recognized as experts in the field of
14 advertising and marketing; and

15 (B) the Director of the Office on Smoking
16 and Health of the Centers for Disease Control
17 and Prevention who shall serve as an ex officio
18 member of the Board.

19 (3) TERMS AND VACANCIES.—The members of
20 the Board shall serve staggered terms as determined
21 appropriate at the time of appointment by the Sec-
22 retary. Any vacancy in the Board shall not affect its
23 powers, but shall be filled in the same manner as the
24 original appointment.

1 (4) TRAVEL EXPENSES.—The members of the
2 Board shall be allowed travel expenses, including per
3 diem in lieu of subsistence, at rates authorized for
4 employees of agencies under subchapter I of chapter
5 57 of title 5, United States Code, while away from
6 their homes or regular places of business in the per-
7 formance of services for the Board.

8 (5) REMOVAL.—Members of the Board may
9 only be removed by a majority vote of the members
10 of the Board for neglect of duty or malfeasance in
11 office.

12 (6) DUTIES.—The Board may—

13 (A) enter into contracts with or award
14 grants to eligible entities to develop messages
15 and campaigns designed to reduce the use of to-
16 bacco products that are based on effective strat-
17 egies to affect behavioral changes in children
18 and other targeted populations; and

19 (B) enter into contracts with or award
20 grants to eligible entities to carry out public in-
21 formational and educational activities designed
22 to reduce the use of tobacco products.

23 (c) ELIGIBILITY.—To be eligible to receive funding
24 under this section an entity shall—

25 (1) be a—

1 (A) public entity or a State health depart-
2 ment; or

3 (B) private or nonprofit private entity
4 that—

5 (i)(I) is not affiliated with a tobacco
6 product manufacturer or importer;

7 (II) has a demonstrated record of
8 working effectively to reduce tobacco prod-
9 uct use; or

10 (III) has expertise in conducting a
11 multi-media communications campaign;
12 and

13 (ii) has expertise in developing strate-
14 gies that affect behavioral changes in chil-
15 dren and other targeted populations;

16 (2) prepare and submit to the Board an appli-
17 cation at such time, in such manner, and containing
18 such information as the Board may require, includ-
19 ing a description of the activities to be conducted
20 using amounts received under the grant or contract;

21 (3) provide assurances that amounts received
22 under this section will be used in accordance with
23 subsection (c); and

24 (4) meet any other requirements determined ap-
25 propriate by the Board.

1 (d) USE OF FUNDS.—An entity that receives funds
2 under this section shall use amounts provided under the
3 grant or contract to conduct multi-media public edu-
4 cational and social marketing campaigns that are designed
5 to discourage and de-glamorize the use of tobacco prod-
6 ucts, encourage those using such products to quit, and
7 educate the public about the hazards of exposure to envi-
8 ronmental tobacco smoke. Such amounts may be used to
9 design and implement such activities and to conduct re-
10 search concerning the effectiveness of such programs.

11 (e) NEEDS OF CERTAIN POPULATIONS.—In awarding
12 grants and contracts under this section, the Board shall
13 take into consideration the needs of particular popu-
14 lations.

15 (f) COORDINATION.—

16 (1) IN GENERAL.—The Secretary shall ensure
17 that programs and activities under this section are
18 coordinated with programs and activities carried out
19 under this title.

20 (2) OTHER FEDERAL ENTITIES.—The Board
21 may secure directly from any Federal department or
22 agency such information as the Board considers nec-
23 essary to carry out the provision of this section.

24 (g) ALLOCATION OF FUNDS.—Not to exceed—

1 (1) 25 percent of the amount made available
2 under subsection (h) for each fiscal year shall be
3 provided to States for State and local media-based
4 and nonmedia-based education, prevention and ces-
5 sation campaigns;

6 (2) 20 percent of the amount made available
7 under subsection (h) for each fiscal year shall be
8 used specifically for the development of new mes-
9 sages and campaigns; and

10 (3) not less than 50 percent of the amount
11 made available under subsection (h) for each fiscal
12 year shall be used specifically to place media mes-
13 sages and carry out other dissemination activities
14 described in subsection (d).

15 (h) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated amounts provided under
17 section 101(d)(2)(B) to carry out this section.

18 (i) TRIGGER.—No expenditures shall be made under
19 this section during any fiscal year in which the annual
20 amount appropriated for the Centers for Disease Control
21 and Prevention is less than the amount so appropriated
22 for the prior fiscal year.

1 **CHAPTER 3—NATIONAL CESSATION**
2 **PROGRAM**

3 **SEC. 321. NATIONAL TOBACCO CESSATION PROGRAM.**

4 (a) **ESTABLISHMENT.**—There is established a pro-
5 gram to be known as the “National Tobacco Cessation
6 Program”. The Secretary may award grants to, and enter
7 into contracts and cooperative agreements with, public and
8 private entities for the purpose of expanding the availabil-
9 ity and utilization of tobacco use cessation products and
10 services.

11 (b) **USE OF FUNDS.**—Amounts made available under
12 a grant, contract or cooperative agreement under sub-
13 section (a) shall be used for the planning, establishment,
14 or administration of tobacco use cessation programs ap-
15 proved in accordance with subsection (d).

16 (c) **CESSATION PROGRAMS AND ACTIVITIES.**—

17 (1) **IN GENERAL.**—

18 (A) **REQUIREMENTS.**—Programs receiving
19 assistance under this section shall provide a
20 range of cost-effective and evidence-based prod-
21 ucts and services that are—

22 (i) consistent with the most recent to-
23 bacco cessation guidelines issued by the
24 Agency for Health Care Policy and Re-
25 search; or

1 (ii) approved as safe and effective for
2 cessation by the Food and Drug Adminis-
3 tration.

4 (B) ADDITIONAL GUIDELINES.—Using the
5 best available scientific information, the Sec-
6 retary shall promulgate such additional guide-
7 lines as are necessary to assure the quality, ac-
8 cessibility and cost effectiveness of products and
9 services receiving funds under this section.

10 (2) ACTIVITIES.—Except as provided in sub-
11 sections (d) and (e), amounts provided under this
12 section may be used for the following:

13 (A) Evidence-based cessation products and
14 activities described in the application for assist-
15 ance under this section, including—

16 (i) science-based programs designed to
17 assist individuals to quit their use of to-
18 bacco products;

19 (ii) training in cessation intervention
20 methods for health plans and health pro-
21 fessionals, including physicians, nurses,
22 dentists, health educators, public health
23 professionals, and other health care provid-
24 ers;

1 (iii) programs to encourage health in-
2 surers and health plans to provide coverage
3 for evidence-based tobacco use cessation
4 interventions and therapies, except that the
5 use of any funds under this clause to offset
6 the cost of providing a smoking cessation
7 benefit may only be used on a temporary
8 demonstration basis;

9 (iv) programs to encourage employer-
10 based wellness programs to provide evi-
11 dence-based tobacco use cessation interven-
12 tions and therapies; and

13 (v) programs targeted toward minor-
14 ity and low-income individuals, individuals
15 residing in medically underserved areas,
16 and uninsured individuals.

17 (B) Planning, administration, and edu-
18 cational activities related to the activities de-
19 scribed in subparagraph (A).

20 (C) The monitoring and evaluation of ac-
21 tivities carried out under subparagraphs (A)
22 and (B), and reporting and disseminating re-
23 sulting information to health professionals and
24 the public.

1 (D) Targeted pilot programs with evalua-
2 tion components to encourage innovation and
3 experimentation with new methodologies.

4 (3) ANALYSES AND EVALUATION.—

5 (A) IN GENERAL.—Not less than
6 \$30,000,000 of the amount available in each
7 fiscal year to carry out this section shall be
8 made available to the Agency for Health Care
9 Policy and Research, acting in consultation with
10 the Centers for Disease Control and Prevention,
11 to support and conduct periodic analyses and
12 evaluations of effective interventions for smok-
13 ing cessation and appropriate strategies for dis-
14 seminating and implementing these services, in-
15 cluding—

16 (i) the regular updating of tobacco use
17 cessation guidelines;

18 (ii) the development and dissemina-
19 tion of special programs in tobacco ces-
20 sation intervention for national physician
21 and other health care provider speciality
22 societies as well as for national and re-
23 gional health plans;

1 (iii) outcomes, effectiveness, cost-ef-
2 fectiveness and other health services re-
3 search on tobacco product cessation; and

4 (iv) the evaluation of the effectiveness
5 of such activities.

6 (B) RESEARCH.—In carrying subpara-
7 graph (A), the Centers for Disease Control and
8 Prevention, in coordination with the Agency for
9 Health Care Policy and Research, the Food and
10 Drug Administration and the National Insti-
11 tutes of Health, shall conduct research on—

12 (i) cultural, social, behavioral, neuro-
13 logical and psychological factors affecting
14 how individuals, including youth, success-
15 fully quit using tobacco products;

16 (ii) the effectiveness of drugs and de-
17 vices in assisting individuals to stop using
18 tobacco products, including differences
19 among populations based on race, gender
20 or age;

21 (iii) the effects of cessation meth-
22 odologies, including pharmacological prod-
23 ucts, on pregnant women; and

24 (iv) other research activities relating
25 to the cessation of tobacco products.

1 (4) COORDINATION.—Tobacco use cessation ac-
2 tivities permitted under this subsection may be con-
3 ducted in coordination with other federally funded
4 programs, including—

5 (A) the special supplemental food program
6 under section 17 of the Child Nutrition Act of
7 1966 (42 U.S.C. 1786);

8 (B) the Maternal and Child Health Serv-
9 ices Block Grant program under title V of the
10 Social Security Act (42 U.S.C. 701 et seq.);

11 (C) the State Children's Health Insurance
12 Program of the State under title XXI of the
13 Social Security Act (42 U.S.C. 13397aa et
14 seq.);

15 (D) the school lunch program under the
16 National School Lunch Act (42 U.S.C. 1751 et
17 seq.);

18 (E) an Indian Health Service Program;

19 (F) the community health center program
20 under section 330 of the Public Health Service
21 Act (42 U.S.C. 254b);

22 (G) State-initiated smoking cessation pro-
23 grams that include provisions for reimbursing
24 individuals for medications or therapeutic tech-
25 niques;

1 (H) the substance abuse and mental health
2 services block grant program, and the preven-
3 tive health services block grant program, under
4 title XIX of the Public Health Service Act (42
5 U.S.C. 300w et seq.);

6 (I) the medicaid program under title XIX
7 of the Social Security Act (42 U.S.C. 1396 et
8 seq.); and

9 (J) programs administered by the Depart-
10 ment of Defense and the Department of Veter-
11 ans Affairs.

12 (5) TECHNICAL ASSISTANCE.—The Secretary
13 may provide technical assistance to entities receiving
14 assistance under this section in planning and operat-
15 ing activities to be carried out under this chapter.

16 (d) LIMITATION.—Payments made under this chap-
17 ter may not be used for—

18 (1) making cash payments to intended recipi-
19 ents of tobacco use cessation services;

20 (2) purchasing or improving land, purchasing,
21 constructing, or permanently improving (other than
22 minor remodeling) any building or other facility, or
23 purchasing major medical equipment;

1 (3) satisfying any requirement for the expendi-
2 ture of non-Federal funds as a condition of the re-
3 ceipt of Federal funds; or

4 (4) providing financial assistance to any entity
5 other than a public or private entity.

6 (e) APPLICATION.—The Secretary may make pay-
7 ments under this section to an entity for a fiscal year only
8 if—

9 (1) the entity submits to the Secretary an appli-
10 cation for such payments;

11 (2) the application contains a plan that meets
12 the requirements proscribed by the Secretary;

13 (3) the application contains such assurances as
14 the Secretary may require regarding compliance with
15 the requirements of this chapter;

16 (4) the application is in such form and is sub-
17 mitted by such date as the Secretary may require;
18 and

19 (5) the applicant agrees to permit and cooper-
20 ate with Federal investigations, including audits, un-
21 dertaken in accordance with regulations promulgated
22 by the Secretary.

23 (f) FUNDING.—The Secretary shall use amounts
24 made available under section 101(d)(2)(B) for a fiscal
25 year to carry out this section.

1 **SEC. 322. REPORTS, DATA, AND AUDITS.**

2 (a) DATA.—

3 (1) COLLECTION AND REPORTING.—A State
4 shall collect and report data for a fiscal year and
5 submit to the Secretary, not later than February 1
6 of the succeeding fiscal year, a report that—

7 (A) describes the purposes for which the
8 State expended payments made to the State
9 under section 321;

10 (B) describes the extent of progress made
11 by the State for purposes of such section;

12 (C) meets the conditions described in para-
13 graph (2); and

14 (D) contains such additional information
15 as determined necessary by the Secretary, and
16 which is submitted in such form, as the Sec-
17 retary may require.

18 (2) UNIFORM DATA SETS.—

19 (A) IN GENERAL.—The Secretary, in con-
20 sultation with the States, shall develop sets of
21 data for uniformly defining levels of youth and
22 adult use of tobacco products (referred to as
23 ‘uniform tobacco product use data items’). The
24 Secretary shall develop formats for the uniform
25 collecting and reporting of information on such
26 items.

1 (B) LATER FISCAL YEARS.—In the case of
2 fiscal year 2000 and each subsequent fiscal
3 year, a condition under paragraph (1) for a
4 State is that the State will, in accordance with
5 the applicable format under subparagraph (A),
6 collect during such year, and include in the re-
7 port under paragraph (1), the necessary infor-
8 mation for each of the tobacco product use data
9 items.

10 (3) UNIFORM CRITERIA.—The Secretary, in
11 consultation with the States, shall establish criteria
12 for the uniform collection and reporting of data on
13 activities authorized in section 321 with respect to
14 which no uniform tobacco product use data items
15 under paragraph (2) exist.

16 (4) PUBLIC INSPECTION OF REPORTS.—A con-
17 dition under paragraph (1) for a fiscal year is that
18 the State involved will make copies of the report
19 submitted under such paragraph for the fiscal year
20 available for public inspection, and will upon request
21 provide a copy of the report to any individual for a
22 charge not exceeding the cost of providing the copy.

23 (b) AUDITS.—

24 (1) FISCAL CONTROL AND ACCOUNTING PROCE-
25 DURES.—Each State shall establish fiscal control

1 and fund accounting procedures as may be necessary
2 to ensure the proper disbursement of and accounting for
3 Federal funds paid to the State under section 321
4 and funds transferred for use under this chapter.

5 (2) ANNUAL SUBMISSION.—Each State shall
6 annually audit its expenditures from payments re-
7 ceived under section 321. Such State audits shall be
8 conducted by an entity independent of any agency
9 administering a program funded under this chapter,
10 and, in so far as practical, in accordance with the
11 Comptroller General's standards for auditing govern-
12 mental organizations, programs, activities, and func-
13 tions. Within 30 days following the date on which
14 each audit is completed, the chief executive officer of
15 the State shall transmit a copy of that audit to the
16 Secretary.

17 (3) REPAYMENTS.—Each State shall, after
18 being provided by the Secretary with adequate notice
19 and an opportunity for a hearing within the State,
20 repay to the United States amounts found not to
21 have been expended in accordance with the require-
22 ments of this chapter. If such repayment is not
23 made, the Secretary shall, after providing the State
24 with adequate notice and opportunity for a hearing
25 within the State, offset such amounts against the

1 amount of any funding to which the State is or may
2 become entitled under this subtitle.

3 (4) AVAILABILITY.—The State shall make cop-
4 ies of the reports and audits required by this sub-
5 section available for public inspection within the
6 State.

7 (5) EVALUATION.—The Comptroller General of
8 the United States shall, from time to time, evaluate
9 the expenditures by the States of payments under
10 this chapter in order to ensure that expenditures are
11 consistent with the provisions of this chapter.

12 (6) REPORT BY SECRETARY.—Not later than
13 October 1, 2000, the Secretary shall prepare and
14 submit to the appropriate committees of Congress a
15 report concerning the activities of the States that
16 have received funds under this chapter and may in-
17 clude in the report any recommendations for appro-
18 priate changes in legislation.

19 (c) NONAPPLICATION OF CERTAIN PROVISIONS.—
20 Title XVII of the Omnibus Budget Reconciliation Act of
21 1981 shall not apply with respect to audits of funds allot-
22 ted under this chapter.

1 **Subtitle B—Health Research**
2 **Program**

3 **CHAPTER 1—NATIONAL FUND FOR**
4 **HEALTH RESEARCH**

5 **SEC. 331. ESTABLISHMENT OF NATIONAL FUND FOR**
6 **HEALTH RESEARCH.**

7 (a) **ESTABLISHMENT.**—There is established within
8 the National Tobacco Trust Fund a fund, to be known
9 as the “National Fund for Health Research” (hereafter
10 in this section referred to as the “Fund”), consisting of
11 such amounts as are transferred to the Fund under sub-
12 section (b) and any interest earned on investment of
13 amounts in the Fund.

14 (b) **TRANSFERS TO FUND.**—There are authorized to
15 be appropriated amounts provided under section
16 101(d)(2)(C) to carry out this section.

17 (c) **OBLIGATIONS FROM FUND.**—Appropriations
18 shall be made under this section to each member Institute
19 or Center of the National Institutes of Health in propor-
20 tion to the amount otherwise annually appropriated for
21 each such Institute or Center.

22 (d) **SPENDING PRIORITIES.**—The director of each
23 member Institute or Center of the National Institutes of
24 Health shall appropriately prioritize the use of funds made
25 available from the Fund for tobacco-related diseases and

1 conditions, including those affecting women and minori-
2 ties.

3 **CHAPTER 2—TOBACCO PREVENTION**

4 **RESEARCH**

5 **SEC. 335. NATIONAL TOBACCO RESEARCH TASK FORCE.**

6 (a) **ESTABLISHMENT.**—The Secretary shall establish
7 a National Tobacco Research Task Force (referred to in
8 this subtitle as the ‘National Task Force’) to foster coordi-
9 nation among public health agencies, academic bodies, and
10 community groups that conduct or support tobacco-related
11 biomedical, clinical, behavioral, health services, public
12 health and community, and surveillance and epidemiology
13 research activities.

14 (b) **COMPOSITION.**—The National Task Force shall
15 be composed of—

16 (1) the Surgeon General;

17 (2) the Director of the Office of Smoking and
18 Health of the Centers for Disease Control and Pre-
19 vention;

20 (3) the Administrator of the Agency for Health
21 Care Policy and Research;

22 (4) the Director of the National Institutes of
23 Health;

24 (5) the Director of the Office of Minority
25 Health;

- 1 (6) the Commissioner on Food and Drugs;
- 2 (7) the Administrator of the Environmental
- 3 Protection Agency;
- 4 (8) two representatives from non-governmental
- 5 public health or tobacco control organizations; and
- 6 (9) two representatives from State or local gov-
- 7 ernment public health agencies and offices.

8 A vacancy on the Task Force shall not effect its ability
9 to conduct business.

10 (c) CHAIR.—The National Task Force shall be
11 chaired by the Secretary or the designee of the Secretary.

12 (d) DUTIES.—The Task Force shall—

13 (1) in accordance with research agenda rec-
14 ommended under section 336, coordinate and advise
15 tobacco-related research activities among Federal
16 public health service agencies;

17 (2) collect and make available to States and
18 communities, through publication and other appro-
19 priate means, evidence-based tobacco-related re-
20 search results and recommendations as to the prac-
21 tical application of such results; and

22 (3) report on a biennial basis to the Secretary
23 and the Committee on Labor and Human Resources
24 of the Senate, and the Committee on Commerce of

1 the House of Representatives on the current and
2 planned activities of participating Federal agencies.

3 **SEC. 336. RESEARCH ACTIVITIES.**

4 (a) **IN GENERAL.**—The Director of the Centers for
5 Disease Control and Prevention, in conjunction with the
6 National Tobacco Research Task Force, shall carry out
7 tobacco-related research, including research on—

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

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

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

19 (4) the prevention of diseases and conditions
20 most associated with the use of tobacco products;

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

23 (6) the relationship between the use of tobacco
24 products and cancer, particularly among minorities;

1 (7) risk factors for tobacco use by children, in-
2 cluding respiratory illness related to exposure to en-
3 vironmental tobacco smoke;

4 (8) risks associated with environmental expo-
5 sure to tobacco smoke;

6 (9) effects of tobacco use by pregnant women;
7 and

8 (10) cultural, social, behavioral, neurological
9 and psychological reasons that individuals refrain
10 from using tobacco products, or continue using to-
11 bacco products.

12 (b) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated amounts provided under
14 section 101(d)(2)(C) to carry out this section.

15 (c) TRIGGER.—No expenditures shall be made under
16 this section during any fiscal year in which the annual
17 amount appropriated for the Centers for Disease Control
18 and Prevention is less than the amount so appropriated
19 for the prior fiscal year.

20 **SEC. 337. TOBACCO PREVENTION DATABASE AND EVALUA-**
21 **TION.**

22 (a) DUTIES.—The Director of the Centers for Dis-
23 ease Control and Prevention, working in consultation with
24 National Task Force, shall carry out tobacco-related sur-
25 veillance and epidemiologic studies, including—

1 (1) the use of youth surveillance systems to
2 monitor the use of all tobacco products by individ-
3 uals under the age of 18, including brands used to
4 enable determinations to be made of company-spe-
5 cific youth market share;

6 (2) the conduct of State-specific youth tobacco
7 use surveys to monitor trends in the use of tobacco
8 products in all States and the District of Columbia;

9 (3) the conduct of tobacco product surveillance
10 to monitor changes in the design, toxicity and bio-
11 logical affects of tobacco products;

12 (4) the conduct of social and policy monitoring
13 of the effects of legislative, policy and media pro-
14 grams on tobacco use;

15 (5) the conduct of environmental tobacco smoke
16 exposure monitoring, including biochemical monitor-
17 ing of such exposure;

18 (6) adult surveillance to track the adult use of
19 all tobacco products;

20 (7) the use of cancer registries to monitor the
21 effects of tobacco use and anti-tobacco programs on
22 cancer incidence;

23 (8) the use of State-based behavioral risk factor
24 surveillance to monitor health risk behaviors associ-
25 ated with tobacco use, including youth drug use; and

1 (9) the use of State-based pregnancy risk as-
2 essments to monitor the effects of tobacco use on
3 pregnancy outcomes.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated amounts provided under
6 section 101(d)(2)(b) to carry out this section.

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

12 **Subtitle C—Miscellaneous**
13 **Provisions**

14 **SEC. 341. LIMITATION ON ADMINISTRATIVE COSTS.**

15 (a) FEDERAL ADMINISTRATION.—The Secretary may
16 use not to exceed—

17 (1) 4 percent of the amount made available
18 under each program under this title in the first fis-
19 cal year for which amounts are made available; and

20 (2) 3 percent of the amount made available
21 under each program under this title in the 2nd and
22 each subsequent fiscal year for which amounts are
23 made available;

1 for the administration (exclusive of scientific and pro-
2 grammatic technical assistance) of each such program
3 under this title.

4 (b) STATE ADMINISTRATION.—A State may use not
5 to exceed—

6 (1) 4 percent of the amount made available to
7 the State under any program under this title in the
8 first fiscal year for which amounts are made avail-
9 able; and

10 (2) 3 percent of the amount made available to
11 the State under any program under this title in the
12 2nd and each subsequent fiscal year for which
13 amounts are made available;

14 for the administration of each such program.

15 **SEC. 342. WITHHOLDING.**

16 (a) WITHHOLDING FOR MISUSE.—

17 (1) IN GENERAL.—The Secretary shall, after
18 adequate notice and opportunity for a hearing con-
19 ducted within the affected State, withhold funds
20 from any State which does not use amounts provided
21 under this title in accordance with the requirements
22 of this title or the certifications otherwise provided
23 by States under this title. The Secretary shall with-
24 hold such funds until the Secretary finds that the

1 reason for the withholding has been removed and
2 there is reasonable assurance that it will not recur.

3 (2) INVESTIGATION.—The Secretary may not
4 institute proceedings to withhold funds under para-
5 graph (1) unless the Secretary has conducted an in-
6 vestigation concerning whether the State has used
7 its amounts provided under this title in accordance
8 with the requirements of this title or the certifi-
9 cations otherwise provided under this title. Investiga-
10 tions required by this paragraph shall be conducted
11 within the affected State by qualified investigators.

12 (3) RESPONSE TO COMPLAINTS.—The Secretary
13 shall respond in an expeditious manner to com-
14 plaints of a substantial or serious nature that a
15 State has failed to use funds in accordance with the
16 requirements of this title or the certifications other-
17 wise provided under this title.

18 (4) MINOR FAILURES.—The Secretary may not
19 withhold funds under paragraph (1) from a State
20 for a minor failure to comply with the requirements
21 of this title or certifications otherwise provided
22 under this title.

23 (b) INVESTIGATIONS.—

24 (1) BY SECRETARY.—The Secretary shall con-
25 duct in several States in each fiscal year investiga-

1 tions of the use of funds received by the States
2 under this title in order to evaluate compliance with
3 the requirements of this title and certifications oth-
4 erwise provided under this title.

5 (2) BY COMPTROLLER GENERAL.—The Comp-
6 troller General of the United States may conduct in-
7 vestigations of the use of funds received under this
8 title by a State in order to insure compliance with
9 the requirements of this title and certifications oth-
10 erwise provided under this title.

11 (c) AVAILABILITY OF RECORDS.—Each State, and
12 each entity which has received funds from amounts pro-
13 vided under this title to a State, shall make appropriate
14 books, documents, papers, and records available to the
15 Secretary or the Comptroller General of the United States,
16 or any of their duly authorized representatives, for exam-
17 ination, copying, or mechanical reproduction on or off the
18 premises of the appropriate entity upon a reasonable re-
19 quest therefore.

20 (d) LIMITATION.—

21 (1) IN GENERAL.—In conducting any investiga-
22 tion in a State, the Secretary or the Comptroller
23 General of the United States may not make a re-
24 quest for any information not readily available to
25 such State or an entity which has received funds

1 from amounts made available to the State under this
2 title or make an unreasonable request for informa-
3 tion to be compiled, collected, or transmitted in any
4 form not readily available.

5 (2) NONAPPLICATION TO JUDICIAL PROCEED-
6 INGS.—Paragraph (1) does not apply to the collec-
7 tion, compilation, or transmittal of data in the
8 course of a judicial proceeding.

9 **SEC. 343. NONDISCRIMINATION.**

10 (a) **PROGRAMS AND ACTIVITIES.—**

11 (1) **IN GENERAL.—**For the purpose of applying
12 the prohibitions against discrimination on the basis
13 of age under the Age Discrimination Act of 1975, on
14 the basis of handicap under section 504 of the Reha-
15 bilitation Act of 1973, on the basis of sex under title
16 IX of the Education Amendments of 1972, or on the
17 basis of race, color, or national origin under title VI
18 of the Civil Rights Act of 1964, programs and activi-
19 ties funded in whole or in part with funds made
20 available under this title are considered to be pro-
21 grams and activities receiving Federal financial as-
22 sistance.

23 (2) **SEX OR RELIGION.—**No person shall on the
24 ground of sex or religion be excluded from participa-
25 tion in, be denied the benefits of, or be subjected to

1 discrimination under, any program or activity fund-
2 ed in whole or in part with funds made available
3 under this title.

4 (b) FAILURE TO COMPLY.—Whenever the Secretary
5 finds that a State, or an entity that has received a pay-
6 ment from a State under this title, has failed to comply
7 with a provision of law referred to in subsection (a)(1),
8 with subsection (a)(2), or with an applicable regulation
9 (including one prescribed to carry out subsection (a)(2)),
10 the Secretary shall notify the chief executive officer of the
11 State and shall request such officer to secure compliance.
12 If within a reasonable period of time, not to exceed 60
13 days, the chief executive officer fails or refuses to secure
14 compliance, the Secretary may—

15 (1) refer the matter to the Attorney General
16 with a recommendation that an appropriate civil ac-
17 tion be instituted;

18 (2) exercise the powers and functions provided
19 by title VI of the Civil Rights Act of 1964, the Age
20 Discrimination Act of 1975, or section 504 of the
21 Rehabilitation Act of 1973, as may be applicable; or

22 (3) take such other action as may be provided
23 by law.

24 (c) ACTION BY ATTORNEY GENERAL.—When a mat-
25 ter is referred to the Attorney General pursuant to sub-

1 section (b)(1), or whenever he has reason to believe that
2 a State or an entity is engaged in a pattern or practice
3 in violation of a provision of law referred to in subsection
4 (a)(1) or in violation of subsection (a)(2), the Attorney
5 General may bring a civil action in any appropriate district
6 court of the United States for such relief as may be appro-
7 priate, including injunctive relief.

8 **SEC. 344. INTERNATIONAL TOBACCO CONTROL.**

9 (a) GOVERNMENTAL ACTIVITIES.—

10 (1) IN GENERAL.—The Secretary (in consulta-
11 tion with the Secretary of State and the Secretary
12 of the Treasury, and acting through the Director of
13 the Centers for Disease Control and Prevention (re-
14 ferred to in this section as the “Director”)) shall
15 provide bilateral assistance to foreign countries, and
16 multilateral assistance to assist such countries in re-
17 ducing and preventing the use of tobacco in foreign
18 countries and in promoting tobacco use cessation.
19 Such assistance shall be focused on preventing the
20 use of tobacco products by minors.

21 (2) USE.—In carrying out paragraph (1), the
22 Secretary may provide funding and technical assist-
23 ance, in a manner that encourages program develop-
24 ment based on the cultural environment of the coun-
25 try involved, to—

1 (A) strengthen the coordination of inter-
2 national tobacco product use prevention, reduc-
3 tion, and cessation data collection and analysis;

4 (B) assist countries to design, implement
5 and evaluate effective anti-tobacco strategies
6 that are based on evidence from successful pro-
7 grams used in the United States or other coun-
8 tries; or

9 (C) provide leadership in the global harmo-
10 nization of tobacco product use prevention, re-
11 duction, and cessation policies, particularly
12 those that control smuggling, prevent children
13 from using tobacco products and protect the
14 public from exposure to environmental tobacco
15 smoke.

16 (3) PARTNERSHIPS.—In providing multilateral
17 assistance under this subsection, the Director may
18 provide for the establishment of partnerships be-
19 tween entities and organization such as the World
20 Bank, the World Health Organization, the United
21 Nations International Children's Emergency Fund,
22 and other similar organization, to create linkages to
23 advance tobacco control practices globally.

24 (4) ADMINISTRATION.—

1 (A) APPLICATION.—To be eligible to re-
2 ceive assistance under this subsection, an entity
3 shall prepare and submit to the Director an ap-
4 plication at such time, in such manner and con-
5 taining such information as the Director may
6 require. The evaluation of such applications
7 shall be made based on selective and appro-
8 priate criteria determined appropriate by the
9 Director.

10 (B) TECHNICAL ASSISTANCE.—The Direc-
11 tor shall provide technical assistance and sci-
12 entific support in carrying out the activities de-
13 scribed in paragraph (1).

14 (5) AUTHORIZATION OF APPROPRIATIONS.—
15 There are authorized to be appropriated amounts
16 provided under section 101(d)(2)(D) to carry out
17 this section.

18 (b) NONGOVERNMENTAL ACTIVITIES.—

19 (1) PURPOSE.—The purpose of this subsection
20 is to establish the American Center on Global
21 Health and Tobacco (referred to in this subsection
22 as “ACT”). ACT shall assist organizations in other
23 countries to reduce and prevent the use of tobacco.
24 Activities ACT supports shall include—

1 (A) public education programs that inform
2 the public about the hazards of tobacco use and
3 of environmental tobacco smoke;

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

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

13 (2) ESTABLISHMENT.—

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

19 (i) not be an agency or establishment
20 of the United States; and

21 (ii) except as otherwise provided in
22 this section, be subject to, and have all the
23 powers conferred upon a nonprofit corpora-
24 tion by the District of Columbia Nonprofit

1 Corporation Act (D.C. Code section 29-501
2 et seq.).

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

9 (C) RELATION TO NONGOVERNMENTAL OR-
10 GANIZATIONS.—ACT shall have a limited staff,
11 and, to the maximum extent practicable, utilize
12 the available experience and talents of non-
13 governmental organizations with specialized ex-
14 perience in health, behavioral sciences, edu-
15 cation, media, marketing and tobacco.

16 (D) INTERNATIONAL ADVISORY COUN-
17 CIL.—An International Advisory Council con-
18 sisting of representatives from key global, re-
19 gional, and national public health organizations,
20 and leading individual educators and health
21 professionals shall provide advisory assistance
22 to ACT.

23 (3) AUTHORIZATION OF APPROPRIATIONS.—
24 There are authorized to be appropriated an amount

1 equal to 50 percent amounts provided under section
2 101(d)(2)(D) to carry out this section.

3 (4) REQUIREMENTS FOR ELIGIBILITY.—

4 (A) OVERSIGHT.—ACT and its grantees
5 shall be subject to the oversight and supervision
6 of Congress.

7 (B) COMPLIANCE.—

8 (i) FUNDING CONTINGENT ON COM-
9 PLIANCE.—Annual payments may be made
10 to ACT under this subsection only if ACT
11 complies with the requirements specified in
12 this subsection.

13 (ii) USE OF FUNDS.—ACT may only
14 fund programs for private sector or quasi-
15 governmental groups for programs which
16 are consistent with the purposes of this
17 subsection.

18 (C) SALARIES AND COMPENSATION.—Offi-
19 cers and employees of ACT may not receive any
20 salary or other compensation from any source
21 other than ACT for services performed for
22 ACT.

23 (D) STOCKS AND DIVIDENDS.—ACT shall
24 not issue any shares of stock or declare or pay
25 any dividends.

1 (E) AUDITS.—

2 (i) PUBLIC ACCOUNTS.—The accounts
3 of ACT shall be audited annually in ac-
4 cordance with generally accepted auditing
5 standards.

6 (ii) COMPTROLLER GENERAL.—The
7 financial transactions of ACT for each fis-
8 cal year may be audited by the Comptroller
9 General, and a report of each such audit
10 submitted to Congress. A copy of each re-
11 port shall be furnished to the Secretary
12 and to ACT at the time the report is sub-
13 mitted to Congress.

14 (F) RECORDKEEPING.—ACT shall ensure
15 that each recipient of assistance from ACT
16 under this subsection keeps such records as
17 may be reasonably necessary to fully disclose
18 the amount and the disposition by such recipi-
19 ent of the proceeds of such assistance, the total
20 cost of the project or undertaking in connection
21 with which such assistance is given or used, and
22 the amount and nature of that portion of the
23 cost of the project or undertaking supplied by
24 other sources, and such other records as will fa-
25 cilitate an effective audit. ACT shall ensure

1 that it, or any of its duly authorized representa-
2 tives, shall have access for the purpose of audit
3 and examination to any books, documents, pa-
4 pers, and records of each recipient of assistance
5 from ACT that are pertinent to assistance pro-
6 vided through ACT under this subsection.

7 **TITLE IV—LIABILITY PROVI-**
8 **SIONS AND CONSENT DE-**
9 **CREES**

10 **SEC. 400. DISMISSAL OF AND LIMITATIONS ON CIVIL AC-**
11 **TIONS.**

12 (a) STATE ATTORNEY GENERAL ACTIONS.—

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

22 (2) FUTURE ACTIONS BASED ON PRIOR CON-
23 DUCT.—With respect to a State, to be eligible to re-
24 ceive funds under section 111, the attorney general
25 for such State shall agree that the State will not

1 commence a civil action after the date of enactment
2 of this Act that is based on the conduct of a partici-
3 pating manufacturer, distributor or retailer of a to-
4 bacco product that occurred prior to the date of en-
5 actment of this Act seeking recovery for expendi-
6 tures attributable to the treatment of tobacco in-
7 duced illnesses and conditions against such a manu-
8 facturer, distributor or retailer.

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

10 (1) IN GENERAL.—The Secretary shall establish
11 procedures under which the attorney general of a
12 State may, not later than 1 year after the date of
13 enactment of this Act, elect not to resolve an action
14 described in subsection (a)(1) or not enter into an
15 agreement under subsection (a)(2). A State whose
16 attorney general that makes such an election shall
17 not be eligible to receive payments from the Trust
18 Fund under section 111. Procedures under this
19 paragraph shall permit such a State to make such
20 an election on a one-time basis.

21 (2) EXTENSION.—In the case of a State that
22 has secured a judgment against a manufacturer, dis-
23 tributor or retailer of a tobacco product in an action
24 described in subsection (a)(1) prior to or during the
25 period described in paragraph (1), and such judg-

1 ment has been appealed by such manufacturer, dis-
2 tributor, or retailer, such period shall be extended
3 during the pendency of the appeal and for an addi-
4 tional period as determined appropriate by the Sec-
5 retary.

6 (3) APPLICATION TO CERTAIN STATES.—A
7 State that has resolved an action described in sub-
8 section (a)(1) with a manufacturer, distributor or re-
9 tailer of a tobacco product prior to the date of en-
10 actment of this Act may not make an election de-
11 scribed in paragraph (1) if, as part of the resolution
12 of such action, the State agreed that the enactment
13 of any national tobacco settlement legislation would
14 supersede the provisions of the resolution.

15 (c) RULES OF CONSTRUCTION.—

16 (1) POST ENACTMENT CLAIMS.—Nothing in
17 this title shall be construed to limit the ability of a
18 State to commence an action against a participating
19 manufacturer, distributor or retailer of a tobacco
20 product with respect to a claim that is based on the
21 conduct of such manufacturer, distributor or retailer
22 that occurred after the date of enactment of this
23 Act.

24 (2) NO LIMITATION ON INDIVIDUALS.—Nothing
25 in this section shall be construed to limit the right

1 of an individual or group of individuals to commence
2 a civil action for past, present, or future conduct by
3 manufacturers, distributors or retailers of tobacco
4 products.

5 (d) DEFINITION.—As used in this section, the term
6 “participating manufacturer” means a manufacturer of
7 tobacco products that has entered into a consent decree
8 under section 411.

9 (e) OTHER ACTIONS.—Any civil action for claims
10 based on addiction to or dependence on a tobacco product
11 filed by the Castano Plaintiffs Legal Committee that is
12 pending against a manufacturer that has entered into a
13 consent decree under section 411, is preempted, termi-
14 nated, and settled in consideration for the establishment
15 of the National Tobacco Cessation Program described in
16 section 321.

17 **Subtitle A—Liability Provisions**

18 **SEC. 401. NATIONAL VICTIMS' COMPENSATION FUND.**

19 (a) ESTABLISHMENT.—

20 (1) IN GENERAL.—The Secretary of the Treas-
21 ury, using amounts made available under section
22 101(d)(2)(D), shall establish a fund within the Na-
23 tional Tobacco Trust Fund to be known as the “Na-
24 tional Victims' Compensation Fund” (referred to in
25 this section as the “Fund”) to be used by the Attor-

1 ney General solely for tobacco-related liability judg-
2 ments and settlements that are based on the conduct
3 of a manufacturer.

4 (2) BASE PAYMENT.—The Secretary of the
5 Treasury shall annually deposit into the Fund
6 amounts made available for such purposes under
7 section 101(d)(2)(D).

8 (3) CONTINGENCY RESERVE ACCOUNT.—

9 (A) IN GENERAL.—As part of the Fund,
10 the Secretary of the Treasury shall establish a
11 Contingency Reserve Account (referred to in
12 this section as the 'Account'). The Secretary
13 shall deposit into the Account any amounts re-
14 maining in the Fund and unobligated at the
15 end of each fiscal year. Such Account shall be
16 established as an interest-bearing account.

17 (B) USE OF ACCOUNT.—Amounts con-
18 tained in the Account shall be used as provided
19 for in subsection (d)(2).

20 (C) PUBLIC HEALTH ACTIVITIES.—With
21 respect to any fiscal year, if amounts in the Ac-
22 count exceed \$20,000,000,000, the Attorney
23 General, in consultation with the Secretary,
24 shall determine whether any such excess

1 amounts should be transferred to the Secretary
2 for use under title III.

3 (b) USE OF FUND.—The Attorney General shall use
4 amounts in the Fund to pay the damages associated with
5 any judgments or settlements for tobacco-related civil ac-
6 tions that are based on the conduct of a manufacturer that
7 occurred prior to the date of enactment of this Act (includ-
8 ing actions under section 1964 of title 18, United States
9 Code).

10 (c) PROCEDURE.—

11 (1) APPLICATION.—Upon the settlement of a
12 tobacco-related civil action described in subsection
13 (b), or upon the entry of a judgment in such an ac-
14 tion, in a manner that provides for the payment of
15 amounts to compensate the plaintiff for damages
16 sustained as a result of a tobacco-related condition
17 or illness, the plaintiff shall submit to the Attorney
18 General an application for the payment of the
19 amount of such settlement or judgment from the
20 Fund.

21 (2) CERTIFICATION.—Not later than 90 days
22 after the date on which an application is submitted
23 under paragraph (1), the Attorney General shall de-
24 termine the validity of such application and any

1 amount for which the applicant is eligible under this
2 section.

3 (3) PAYMENT.—Not later than 30 days after
4 making a determination that an applicant under
5 paragraph (1) is eligible for a payment under this
6 section, the Attorney General shall make a lump
7 sum payment from the Fund to the applicant.

8 (4) SMALL CLAIMANTS.—The Attorney General
9 shall establish procedures to ensure that priority is
10 given under this section to the payment of claims of
11 individuals and small classes of claimants.

12 (d) LIABILITY FOR CLAIMS IN EXCESS OF AMOUNTS
13 IN FUND.—

14 (1) LIABILITY OF MANUFACTURERS.—

15 (A) IN GENERAL.—If, with respect to a fis-
16 cal year, the aggregate amount of all payments
17 to be made to eligible applicants under sub-
18 section (b) exceed the amount in the Fund for
19 such year, such excess amount shall, except as
20 provided in subparagraph (B), be paid by man-
21 ufacturers.

22 (B) LIMITATION ON AMOUNT.—The aggre-
23 gate amount of all payments described in sub-
24 paragraph (A) (excluding amounts paid through
25 the Fund) for which manufacturers shall be lia-

1 ble in any fiscal year shall not exceed
2 \$4,000,000,000. Amounts paid by a manufac-
3 turer to settle a civil action commenced by a
4 State prior to the date of enactment of this Act
5 shall not apply in determining the liability of a
6 manufacturer under this subparagraph.

7 (2) USE OF CONTINGENCY RESERVE AC-
8 COUNT.—In any fiscal year in which the aggregate
9 amount of all payments to be made to eligible appli-
10 cants under subsection (b) exceed the sum of the
11 amount in the Fund for such year and the limitation
12 described in paragraph (2)(B), such excess amount
13 shall be paid from amounts contained in the Ac-
14 count.

15 (3) PAYMENT OF EXCESS.—If the Attorney
16 General determines under subsection (b) that
17 amounts to be paid to eligible applicants for a fiscal
18 year exceed the sum of the amounts available in the
19 Fund for such year, the limitation described in para-
20 graph (1)(B), and the amounts contained in the Ac-
21 count, the Attorney General shall provide for the
22 payment of any unpaid amounts in the subsequent
23 fiscal year.

24 (e) APPLICATION TO CERTAIN MANUFACTURERS.—
25 The provisions of this section shall apply to a manufac-

1 turer that begins manufacturing tobacco products after
2 the date of enactment of this Act, except that if such a
3 manufacturer fails to make payments as provided for in
4 subsection (d)(1), such manufacturer shall pay to the At-
5 torney General an amount equal to 150 percent of the
6 amount that such manufacturer would have paid under
7 such subsection.

8 (f) REGULATIONS.—The Attorney General shall pro-
9 mulgate regulations to establish procedures for the imple-
10 mentation and enforcement of this section.

11 (g) LIMITATION ON APPLICATION OF CAP.—

12 (1) IN GENERAL.—The provisions of subsection
13 (d) shall not apply with respect to any judgment or
14 settlement in any civil action where it has been de-
15 termined that the manufacturer involved—

16 (A) has failed to make payments on assess-
17 ment under section 102;

18 (B) has failed to disclose documents in ac-
19 cordance with discovery requests or section 404;

20 (C) has failed to enter into or comply with
21 consent decrees under subtitle B; or

22 (D) has otherwise failed to comply with the
23 provisions of this Act, or an amendment made
24 by this Act.

1 (2) YEAR INVOLVED.—If, with respect to a
2 manufacturer to which paragraph (1) applies, the
3 cap contained in subsection (d)(1)(B) is not reached
4 for the year involved, the limitation in such para-
5 graph (1) shall apply to such manufacturer in the
6 first year in which the cap is reached.

7 (h) DISTRIBUTORS AND RETAILERS.—Nothing in
8 this section shall be construed as limiting the liability of
9 any distributor or retailer of a tobacco product.

10 **SEC. 402. RULE OF CONSTRUCTION.**

11 Nothing in this title shall be construed as granting
12 immunity to any manufacturer of tobacco products with
13 respect to tobacco-related civil actions for damages sus-
14 tained as a result of tobacco-related conditions or illnesses,
15 or for criminal actions relating to tobacco products, re-
16 gardless of whether the conduct involved occurred prior
17 to or after the date of enactment of this Act.

18 **SEC. 403. ATTORNEY'S FEES AND EXPENSES.**

19 (a) ARBITRATION PANEL.—

20 (1) ESTABLISHMENT.—For the purpose of
21 awarding of attorneys' fees and expenses relating to
22 litigation, involving a claim brought by a Federal,
23 State or local government entity, affected by, or
24 legal services that resulted in whole or in part in,

1 this Act, there is established an Arbitration Panel
2 which shall consist of—

3 (A) 3 members to be appointed by the
4 Trustees;

5 (B) 1 member to be appointed by the par-
6 ticipating manufacturers;

7 (C) 1 member to be appointed by the At-
8 torneys General of the States who were signato-
9 ries to the Memorandum of Understanding
10 dated June 20, 1997, by and between tobacco
11 manufacturers, the Attorneys General, and pri-
12 vate attorneys; and

13 (D) 1 member to be appointed by the pri-
14 vate attorneys, including attorneys representing
15 plaintiffs in the case of Dianne Castano v.
16 American Tobacco Company.

17 (2) OPERATION.—

18 (A) ESTABLISHMENT.—The members of
19 the Arbitration Panel shall be appointed not
20 later than 30 days after the effective date of
21 this Act.

22 (B) PROCEDURES.—Not later than 30
23 days after the date on which all members of the
24 Arbitration Panel are appointed under para-
25 graph (1), the Panel shall establish the proce-

1 dures under which the Panel will operate which
2 shall include—

3 (i) a requirement that any finding by
4 the Arbitration Panel must be in writing
5 and supported by written reasons;

6 (ii) procedures for the exchanging of
7 exhibits and witness lists by the various
8 claimants for awards;

9 (iii) to the maximum extent prac-
10 ticable, requirements that proceedings be-
11 fore the Panel be based on affidavits rath-
12 er than live testimony; and

13 (iv) a requirement that all claims be
14 submitted to the Arbitration Panel not
15 later than 3 months after the effective date
16 of this Act and a determination made by
17 the Panel with respect to such claims not
18 later than 7 months after such date of en-
19 actment.

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

1 (4) CRITERIA.—In making any award pursuant
2 to this section, the Arbitration Panel shall consider
3 the following criteria:

4 (A) The time and labor required by the
5 claimant.

6 (B) The novelty and difficulty of the ques-
7 tions involved in the action for which the claim-
8 ant is making a claim.

9 (C) The skill requisite to perform the legal
10 service involved properly:

11 (D) The preclusion of other employment by
12 the attorney due to acceptance of the action in-
13 volved.

14 (E) Whether the fee is fixed or a percent-
15 age.

16 (F) Time limitations imposed by the client
17 or the circumstances.

18 (G) The amount involved and the results
19 obtained.

20 (H) The experience, reputation, and ability
21 of the attorneys involved.

22 (I) The undesirability of the action.

23 (J) Whether the fee is excessive in relation
24 to the overall judgment or settlement award.

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

9 (b) SOURCE AND PAYMENT OF AWARDS.—In no
10 event shall any award of the Arbitration Panel be paid
11 from, credited against, or otherwise affect in any way any
12 fee payments that are required to be made by any partici-
13 pating manufacturer under section 102 or under any other
14 provision of this Act. Any such award shall be paid by
15 participating manufacturers (except a manufacturer de-
16 scribed in section 102(a)(7)(B)) pursuant to an allocation
17 agreement among such manufacturers.

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

1 sion of fees among the attorneys party to any such agree-
2 ment.

3 (d) DISCLOSURE.—The Secretary shall promulgate
4 regulations for the public disclosure of any award of attor-
5 neys' fees under this section.

6 **SEC. 404. PUBLIC DISCLOSURE OF TOBACCO INDUSTRY**
7 **DOCUMENTS.**

8 (a) FINDINGS.—Congress finds that—

9 (1) the American tobacco industry has made
10 claims of attorney-client privilege, attorney work
11 product, and trade secrets to protect from public
12 disclosure thousands of internal documents sought
13 by civil litigants;

14 (2) a number of courts have found that these
15 claims of privilege were not made in good faith; and

16 (3) to promote understanding by the public of
17 the tobacco industry's research and practices, a
18 prompt and full exposition of tobacco documents will
19 further the purposes of this Act.

20 (b) APPLICABILITY.—To be eligible to be issued a li-
21 cense to manufacture tobacco products under section 222,
22 a manufacturer shall comply with the provisions of this
23 section.

24 (c) NATIONAL TOBACCO DOCUMENT DEPOSITORY.—
25 Manufacturers of tobacco products shall, not later than

1 60 days after the date of enactment of this Act, establish
2 a National Tobacco Document Depository (in this section
3 referred to as the "Depository"). Such Depository shall
4 be located in the Washington, D.C. area.

5 (d) SUBMISSION OF DOCUMENTS.—Not later than 60
6 days after the date on which the Depository is established
7 under subsection (c), each manufacturer of a tobacco
8 product shall submit to the Depository every existing doc-
9 ument (including any document subject to a claim of at-
10 torney-client privilege, attorney work product, or trade se-
11 cret protection) in the manufacturer's possession, custody,
12 or control—

13 (1) relating, referring, or pertaining to—

14 (A) any studies, research, or analysis of
15 any possible health or pharmacological effects
16 in humans or animals, including addiction, as-
17 sociated with the use of tobacco products or
18 components of tobacco products;

19 (B) the engineering, manipulation, or con-
20 trol of nicotine in tobacco products;

21 (C) the sale or marketing of tobacco prod-
22 ucts;

23 (D) any research involving safer or less
24 hazardous tobacco products;

25 (E) tobacco use by minors; or

1 (F) the relationship between advertising or
2 promotion and the use of tobacco products;

3 (2) produced, or ordered to be produced, by the
4 tobacco product manufacturer in any health-related
5 civil or criminal proceeding, judicial or administra-
6 tive; and

7 (3) that the National Tobacco Documents Re-
8 view Board (established under subsection (h)) deter-
9 mines is appropriate for submission to the Deposi-
10 tory.

11 (e) DOCUMENT IDENTIFICATION AND INDEX.—Docu-
12 ments submitted to the depository under this section shall
13 be sequentially numbered and marked to identify the to-
14 bacco manufacturer. Not later than 30 days after the date
15 on which such documents are submitted to the Depository,
16 each tobacco manufacturer shall supply the Depository
17 with a comprehensive document index which references the
18 applicable documents described in subsection (c)(1).

19 (f) PRIVILEGE AND TRADE SECRET CLAIMS.—

20 (1) IN GENERAL.—Any document that is sub-
21 ject to a claim by a tobacco manufacturer of attor-
22 ney-client privilege, attorney work product, or trade
23 secret protection shall be identified as such and shall
24 be submitted separately to the Depository. The com-
25 pliance with this section by a manufacturer shall not

1 be deemed to be a waiver of any applicable claim of
2 privilege or trade secret protection.

3 (2) PRIVILEGE AND TRADE SECRET LOGS.—Not
4 later than 90 days after the date on which the De-
5 pository is established, each manufacturer shall sub-
6 mit to the Depository a comprehensive log that iden-
7 tifies on a document-by-document basis all docu-
8 ments submitted to the Depository for which the
9 manufacturer asserts attorney-client privilege, attor-
10 ney work product, or trade secrecy. Any such claim
11 shall be made by a manufacturer in good faith.

12 (3) REQUIREMENTS.—The log established
13 under paragraph (2) shall—

14 (A) be organized in numerical order based
15 upon the document identifier assigned to each
16 document;

17 (B) with respect to each such document
18 contained in the log, the log shall contain—

19 (i) a description of the document, in-
20 cluding type of document, title of docu-
21 ment, name and position or title of each
22 author, addressee, and other recipient, the
23 document date, the document purpose and
24 general subject matter;

1 (ii) an explanation of why the docu-
2 ment or a portion of the document is privi-
3 leged or subject to trade secret protection;
4 and

5 (iii) a statement whether any previous
6 claim of privilege or trade secret was de-
7 nied and, if so, in what proceeding.

8 (4) REVIEW.—With respect to documents for
9 which the manufacturer previously has asserted one
10 or more of the privileges described in paragraph (2),
11 or has asserted a claim of trade secret protection,
12 the manufacturer shall conduct a good faith de novo
13 review of such documents to determine whether such
14 privilege or trade secret protection is appropriate.
15 Each manufacturer shall submit a declaration, pur-
16 suant to section 1746 of title 28, United States
17 Code, by an individual with responsibility for the de
18 novo review of such documents, the preparation of
19 the privilege log and who has knowledge of its con-
20 tents. The declarant shall attest to the manufactur-
21 er's compliance with the requirements of this section
22 pertaining to the review of documents and prepara-
23 tion of a privilege log.

24 (5) PUBLIC AVAILABILITY.—Not later than 30
25 days after the receipt of a log under this subsection.

1 the Depository shall make such log available for
2 public inspection and review.

3 (g) DISCLOSURE BY THE DEPOSITORY.—Not later
4 than 30 days after the receipt of a document that is not
5 subject to a claim of attorney-client privilege, attorney
6 work product, or trade secret protection, the Depository
7 shall make the document available to the public using the
8 Internet and other means.

9 (h) TOBACCO DOCUMENTS REVIEW BOARD.—

10 (1) IN GENERAL.—There shall be established a
11 Tobacco Documents Review Board (referred to in
12 this subsection as the “Board”) that shall consist of
13 5 members to be appointed by the President with
14 the advice and consent of the Senate.

15 (2) ADMINISTRATIVE PROVISIONS.—

16 (A) ELIGIBILITY.—To be eligible to serve
17 as a member of the Board, a individual shall—

18 (i) be a citizen of the United States;

19 (ii) not be in violation of any Federal
20 ethics or conflict of interest rules applica-
21 ble to Federal appointees; and

22 (iii) have a demonstrated skill in the
23 law.

1 (B) TERMS.—A member of the Board shall
2 be appointed for a term of 7 years and shall be
3 eligible for reappointment.

4 (C) STAFF.—The Board may hire such
5 staff and establish such operating procedures as
6 the Board determines to be necessary to carry
7 out its functions under this section.

8 (3) RESPONSIBILITY FOR DEPOSITORY.—The
9 Board shall maintain the Depository and, in con-
10 sultation with the General Services Administration,
11 establish guidelines and procedures for the establish-
12 ment and operation of the Depository, including
13 guidelines for the immediate disclosure of documents
14 that are not subject to unresolved claims of privilege
15 or trade secrecy. In establishing such guidelines and
16 procedures, the Board shall ensure that the Deposi-
17 tory is open to the public and maintained in a man-
18 ner that permits it to be used as a resource for liti-
19 gants, public health groups, and persons with an in-
20 terest in tobacco industry records and research con-
21 cerning smoking and health, addiction or nicotine
22 dependency, safer or less hazardous cigarettes, and
23 underage tobacco use and marketing.

24 (4) RESOLUTION OF DISPUTED PRIVILEGE AND
25 TRADE SECRET CLAIMS.—

1 (A) IN GENERAL.—The Board, upon a pe-
2 tition by any individual to resolve a claim relat-
3 ing to the disclosure of a document to the pub-
4 lic, shall determine whether to uphold or reject
5 disputed claims of attorney-client privilege, at-
6 torney work product, or trade secret protection
7 with respect to documents submitted to the De-
8 pository under subsection (f).

9 (B) DETERMINATION.—A determination
10 under subparagraph (A) shall be made by a sin-
11 gle member of the Board, in writing, and shall
12 be subject to judicial review as specified in this
13 section. All such determinations shall be based
14 solely on consideration of the subject of the doc-
15 ument involved and on written submissions
16 from the person claiming that the document is
17 privileged or protected by trade secrecy and
18 from any person seeking disclosure of the docu-
19 ment.

20 (C) PRIVILEGE.—In making determination
21 under subparagraph (B), the Board shall apply
22 the attorney-client privilege and the attorney
23 work-product doctrine in a manner consistent
24 with Federal law.

1 (D) TRADE SECRET.—In making deter-
2 minations under subparagraph (B), the Board
3 shall define “trade secret” as ‘any commercially
4 valuable plan, formula, process or device that is
5 used for making or preparing trade commod-
6 ities and that can be said to be the end product
7 of either innovation or substantial effort. There
8 must be a direct relationship between the trade
9 secret and the productive process.

10 (E) FINAL DETERMINATION.—The Board
11 may uphold a claim of privilege or trade protec-
12 tion with respect to a claim under this section
13 in its entirety or, in its sole discretion, it may
14 redact that portion of a document that it deter-
15 mines is protected from public disclosure under
16 this paragraph. Any decision of the Board shall
17 be final unless judicial review is sought as pro-
18 vided for in subparagraph (F). In the event
19 that judicial review is sought, the Board’s deci-
20 sion shall be stayed pending a final judicial de-
21 cision.

22 (F) PETITION; RIGHT OF APPEAL.—

23 (i) IN GENERAL.—Any person may
24 obtain judicial review of a final determina-
25 tion of the Board under subparagraph (E)

1 by filing a petition for review with the
2 United States Court of Appeals for the
3 Federal Circuit within 30 days after the
4 entry of such determination. A copy of the
5 petition shall be transmitted by the Clerk
6 of the Court to the Board. The Board shall
7 file in the court the record of the proceed-
8 ings on which the Board based its decision
9 (including any documents reviewed by the
10 Board in camera) as provided for in sec-
11 tion 2112 of title 28, United States Code.
12 Upon the filing of such a petition, the
13 court shall have exclusive jurisdiction to af-
14 firm or set aside the Board's decision, ex-
15 cept that until the filing of the record the
16 Board may modify or set aside its decision.

17 (ii) ADDITIONAL EVIDENCE AND AR-
18 GUMENTS.—If a petitioner under clause (i)
19 applies to the court for leave to adduce ad-
20 ditional evidence or arguments with respect
21 to the determination being reviewed and
22 demonstrated to the satisfaction of the
23 court that such additional evidence or ar-
24 guments are material and that there were
25 reasonable grounds for the failure to ad-

1 duce such evidence or arguments in the
2 proceedings before the Board, the court
3 may order the Board to provide additional
4 opportunity for the presentation of evi-
5 dence or arguments in such manner and
6 upon such terms as the court determines
7 to be proper. The Board may modify its
8 findings or make new findings by reason of
9 the additional evidence or arguments and
10 shall file with the court such modified or
11 new findings, and its recommendation, if
12 any, for the modification or setting aside
13 of the decision being reviewed.

14 (iii) STANDARD OF REVIEW; FINALITY
15 OF JUDGMENTS.—With respect to a review
16 by the court under this subparagraph, the
17 Board's findings of fact, if supported by
18 substantial evidence on the record taken as
19 a whole, shall be conclusive. The court
20 shall review the Board's legal conclusions
21 on a de novo basis. The judgment of the
22 court affirming or setting aside the
23 Board's decision shall be final, subject to
24 review by the Supreme Court of the United
25 States upon certiorari or certification, as

1 provided in section 1254 of title 28, United
2 States Code.

3 (5) PUBLIC DISCLOSURE AFTER FINAL DECI-
4 SION.—Not later than 30 days after the date of a
5 final determination by the Board that a document,
6 as redacted by the Board or in its entirety, is not
7 protected from disclosure by a claim of attorney-cl-
8 ient privilege, attorney work product, or trade secret
9 protection, the Board shall direct the Depository to
10 make the document available to the public. No Fed-
11 eral or State court shall have jurisdiction to review
12 a claim of attorney-client privilege, attorney work
13 product, or trade secret protection for a document
14 that has lawfully been made available to the public
15 pursuant to this paragraph.

16 (6) EFFECT OF NONDISCLOSURE DECISION ON
17 JUDICIAL PROCEEDINGS.—The Board's decision that
18 a document is protected by attorney-client privilege,
19 attorney work product, or trade secret protection is
20 binding only for the purpose of protecting the docu-
21 ment from disclosure by the Depository. The deci-
22 sion by the Board shall not be construed to resolve
23 a claim that a document should not be disclosed in
24 a judicial proceeding.

25 (i) SANCTIONS.—

1 (1) REQUIREMENT OF GOOD FAITH.—

2 (A) IN GENERAL.—Each tobacco manufac-
3 turer shall act in good faith and have a readily
4 understood claim of privilege or trade secret
5 protection based on fact and law as described in
6 subsection (h)(4). If the Board determines that
7 a tobacco manufacturer has not acted in good
8 faith with full knowledge of the truth of the
9 facts asserted and with a reasonable basis
10 under existing law, the manufacturer shall be
11 assessed costs, which shall include the full ad-
12 ministrative costs of handling the claim of privi-
13 lege, and all attorneys' fees incurred by the
14 Board and any party contesting the privilege.

15 (B) CIVIL PENALTIES.—With respect to a
16 manufacturer that has failed to act in good
17 faith as required under subparagraph (A), the
18 Board may impose civil penalties of not to ex-
19 ceed \$50,000 per violation if it determines that
20 the manufacturer knowingly acted with the in-
21 tent to delay, frustrate, defraud, or obstruct the
22 Board's determination of privilege, attorney
23 work product, or trade secret protection claims.

24 (2) FAILURE TO PRODUCE.—The Board may
25 impose a civil penalty upon the failure of a tobacco

1 manufacturer to produce indexes and documents in
2 compliance with this section, of not to exceed
3 \$50,000 per violation.

4 (3) SEPARATE VIOLATIONS.—For purposes of
5 this subsection, a separate violation shall be deemed
6 to have occurred for each document the manufac-
7 turer has failed to produce in a timely manner.

8 (4) LIMITATION.—The maximum penalty that
9 may be imposed on a manufacturer under this sub-
10 section for a related series of violations is
11 \$5,000,000.

12 (5) AMOUNT OF PENALTY.—In determining the
13 amount of any civil penalty under this subsection,
14 the Board shall consider the number of documents,
15 length of delay, any history of prior violations, the
16 ability to pay, and such other matters as justice re-
17 quires.

18 (6) RULE OF CONSTRUCTION.—Nothing in this
19 subsection shall be construed to replace or supersede
20 any criminal sanctions that may apply under title
21 18, United States Code, or under any other title of
22 the United States Code.

23 (j) RULE OF CONSTRUCTION.—The disclosure proc-
24 ess in this section shall not be construed to affect the Fed-
25 eral Rules of Civil or Criminal Procedure or any Federal

1 law which requires the disclosure of documents or which
2 deals with attorney-client privilege, attorney work product,
3 or trade secret protection.

4 (k) DEFINITIONS.—In this section:

5 (1) DOCUMENT.—The term “document” shall
6 include originals and drafts of any kind of written
7 or graphic matter, regardless of the manner of pro-
8 duction or reproduction, of any kind of description,
9 whether sent or received or neither, and all copies
10 thereof that are different in any way from the origi-
11 nal (whether by interlineation, receipt stamp, nota-
12 tion, indication of copies sent or received or other-
13 wise) regardless of whether confidential, privileged,
14 or otherwise, including any paper, book, account,
15 photograph, blueprint, drawing, agreement, contract,
16 memorandum, advertising material, letter, telegram,
17 object, report, record, transcript, study, note, nota-
18 tion, working paper, intra-office communication,
19 intra-department communication, chart, minute,
20 index sheet, routing sheet, computer software, com-
21 puter data, delivery ticket, flow sheet, price list,
22 quotation, bulletin, circular, manual, summary, re-
23 cording of telephone or other conversation or of
24 interviews, or of conferences, or any other written,
25 recorded, transcribed, punched, taped, filmed, or

1 graphic matter, regardless of the manner produced
2 or reproduced. Such term shall also include any
3 tape, recording, videotape, computerization, or other
4 electronic recording, whether digital or analog or a
5 combination of the two.

6 (2) MANUFACTURER.—The term “manufac-
7 turer” includes subsidiaries, assigns, agents, and re-
8 lated or affiliated entities that are primarily funded
9 by persons who manufacture a tobacco product;

10 (3) PROCEEDING.—The term “proceeding” in-
11 cludes any action undertaken pursuant to this sec-
12 tion including the search, indexing, and production
13 of documents.

14 **Subtitle B—Consent Decrees**

15 **SEC. 411. CONSENT DECREES.**

16 (a) REQUIREMENT.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (2), to be eligible to receive payments under
19 section 111, a State, and to be eligible to receive the
20 damages protections under section 401, a tobacco
21 manufacturer, shall enter into consent decrees under
22 this section to be effective on the date of enactment
23 of this Act.

24 (2) GOOD FAITH EFFORTS.—The limitation de-
25 scribed in paragraph (1) with respect to payments

1 under section 111 shall not apply to a State if the
2 attorney general of the State certifies to the Sec-
3 retary that—

4 (A) the State has made good faith efforts
5 to enter into a consent decree in accordance
6 with this subtitle; and

7 (B) such State is willing to be bound by
8 such decree but such decree does not exist be-
9 cause—

10 (i) of the refusal on the part of a to-
11 bacco manufacturer to enter into such de-
12 cree; or

13 (ii) the appropriate court has not en-
14 tered the decree even though the parties
15 have lodged such a decree with the court.

16 (b) TERMS AND CONDITIONS.—

17 (1) IN GENERAL.—The terms and conditions
18 contained in the consent decrees described in sub-
19 section (a) shall contain provisions relating to—

20 (A) an agreement not to directly or indi-
21 rectly pursue or support legal challenges to the
22 implementation of any aspect of this Act (or an
23 amendment made by this Act), including any
24 existing or future regulatory authority under
25 the Federal Food, Drug and Cosmetic Act, any

1 document disclosure requirements, any survey
2 methodology used or penalties applied under
3 title III, and any advertising and marketing re-
4 strictions aimed at reducing youth tobacco use;

5 (B) an agreement to pass-through the
6 costs of the assessments made under section
7 102 to consumers through increases in the price
8 of tobacco products;

9 (C) restrictions on tobacco product adver-
10 tising and marketing aimed at preventing youth
11 tobacco use and youth access to such products;

12 (D) in order to reduce youth tobacco use,
13 restrictions on tobacco industry trade associa-
14 tions;

15 (E) the disclosure of tobacco smoke con-
16 stituents;

17 (F) the disclosure of nontobacco constitu-
18 ents and ingredients found in tobacco products;

19 (G) the disclosure of existing and future
20 documents relating to health, toxicity, and ad-
21 diction related to tobacco product usage;

22 (H) the obligation of manufacturers to
23 make payments for the benefit of States, pri-
24 vate litigants and the general public;

1 (I) the obligation of manufacturers to
2 interact only with exporters, importers, whole-
3 salers, distributors and retailers that operate in
4 compliance with the applicable provisions of
5 Federal, State, or local law regarding the mar-
6 keting and sale of tobacco products;

7 (J) requirements for warnings, labeling,
8 and packaging of tobacco products; and

9 (K) any other matter determined appro-
10 priate by the Secretary or the parties involved.

11 (2) LIMITATIONS.—The terms and conditions
12 contained in the consent decrees described in sub-
13 section (a) shall not contain provisions relating to—

14 (A) tobacco product design, performance,
15 or modification;

16 (B) manufacturing standards and good
17 manufacturing practices; and

18 (C) testing and regulation with respect to
19 toxicity and ingredients approval.

20 (3) ENFORCEABILITY.—The terms and condi-
21 tions contained in the consent decrees described in
22 subsection (a) shall be enforceable by the signato-
23 ries, as well as the Attorney General, and shall in-
24 clude a provision that prohibits signatories from
25 challenging the enforceability of the consent decrees.

1 (4) CONSTRUCTION.—The terms and conditions
2 contained in the consent decrees described in sub-
3 section (a) shall provide that the terms of the decree
4 will be construed in a manner that is consistent with
5 the provision of this Act.

6 (c) APPROVAL.—

7 (1) IN GENERAL.—Prior to the entry of a con-
8 sent decree by a court under this section the court
9 must find that the provisions of the consent de-
10 cree—

11 (A) have been approved by the Secretary
12 and the Attorney General;

13 (B) are fair and reasonable; and

14 (C) are in the public interest.

15 (2) DETERMINATION BY SECRETARY.—To ap-
16 prove a consent decree under paragraph (1)(A), the
17 Secretary and the Attorney General shall have deter-
18 mined whether the provisions of the decree are con-
19 sistent with this Act and the Food, Drug and Cos-
20 metic Act or the rules and regulations promulgated
21 under such Acts.

22 (3) NOTICE TO PUBLIC.—With respect to the
23 approval of a consent decree under this section, the
24 court shall ensure that the public has been given not
25 less than 60 days notice of the filing of the decree

1 by the parties and any objections thereto must be
2 addressed to the satisfaction of the court.

3 (d) ENFORCEMENT.—The provisions of a consent de-
4 cree entered under this section shall remain in effect and
5 enforceable in the court in which the decree is entered.

6 (e) NONAPPLICATION OF PROVISIONS.—If any of the
7 provisions of a consent decree entered into under this sec-
8 tion by a tobacco manufacturer are held to be unconstitu-
9 tional or otherwise held not to apply to such manufacturer,
10 the liability protection contained in section 401 shall cease
11 to apply to such manufacturer.

12 **TITLE V—TOBACCO FARM FAM-**
13 **ILY AND COMMUNITY ASSIST-**
14 **ANCE TRUST FUND**

15 **SEC. 501. TOBACCO FARM FAMILY AND COMMUNITY AS-**
16 **SISTANCE TRUST FUND.**

17 (a) ESTABLISHMENT.—There is established within
18 the National Tobacco Trust Fund a fund to be known as
19 the “Trust Fund for Tobacco Farming Families and Com-
20 munities” (referred to in this section as the “Fund”), con-
21 sisting of such amounts as may be appropriated or cred-
22 ited to the Trust Fund.

23 (b) TRANSFERS TO TRUST FUND.—There are au-
24 thorized to be appropriated to the Fund for each fiscal
25 year amounts made available to the Trust Fund as pro-

1 vided for in section 101(d)(2)(D) and any amounts pro-
2 vided under section 102(a)(1) that are not appropriated
3 in fiscal year 1999.

4 (c) REPAYABLE ADVANCES.—

5 (1) AUTHORIZATION.—There are authorized to
6 be appropriated to the Fund, as repayable advances,
7 such sums as may from time to time be necessary
8 to make expenditures under subsection (d).

9 (2) REPAYMENT WITH INTEREST.—Repayable
10 advances made to the Fund shall be repaid, and in-
11 terest on the advances shall be paid, to the general
12 fund of the Treasury when the Secretary of the
13 Treasury determines that moneys are available in
14 the Fund to make the payments.

15 (3) RATE OF INTEREST.—Interest on an ad-
16 vance made under this subsection shall be at a rate
17 determined by the Secretary of Treasury (as of the
18 close of the calendar month preceding the month in
19 which the advance is made) that is equal to the cur-
20 rent average market yield on outstanding marketable
21 obligations of the United States with remaining pe-
22 riod to maturity comparable to the anticipated pe-
23 riod during which the advance will be outstanding.

24 (d) EXPENDITURES FROM FUND.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 amounts in the Fund shall be available for making
3 expenditures to assist tobacco-dependent farm fami-
4 lies, workers and communities, including—

5 (A) compensation and economic and tran-
6 sitional assistance to tobacco farming families;

7 (B) economic and transitional assistance,
8 including employment-related compensation and
9 services, to workers and businesses (not includ-
10 ing manufacturers of tobacco products) in to-
11 bacco-related industries; and

12 (C) economic development and related
13 transitional assistance for communities whose
14 economies depend significantly upon the pro-
15 duction, handling, marketing and processing of
16 tobacco.

17 (2) IMPLEMENTATION.—Amounts in the Fund
18 shall be available for making expenditures described
19 in paragraph (1) only if a law is enacted not later
20 than January 1, 2000, that specifically prescribes
21 authorized uses of the Fund.

22 (e) BUDGETARY TREATMENT.—This section con-
23 stitutes budget authority in advance of appropriations
24 Acts.

1 (f) TERMINATION OF EFFECTIVENESS.—The author-
2 ity provided by this section terminates effective January
3 1, 2000, unless a law is enacted not later than January
4 1, 2000, that specifically prescribes authorized uses of the
5 Fund.

6 **TITLE VI—REDUCING EXPOSURE**
7 **TO ENVIRONMENTAL TO-**
8 **BACCO SMOKE**

9 **SEC. 601. EDUCATION AND OUTREACH.**

10 From amounts made available for each fiscal year
11 under section 101(d)(2)(D), \$100,000,000 shall be pro-
12 vided to enable States to conduct education and outreach
13 activities relating to the health-related effects of environ-
14 mental tobacco smoke.

15 **SEC. 602. INVOLUNTARY EXPOSURE TO ENVIRONMENTAL**
16 **TOBACCO SMOKE.**

17 From amounts made available for each fiscal year
18 under section 101(d)(2)(D), \$100,000,000 shall be pro-
19 vided to enable States to establish programs to reduce in-
20 voluntary exposure to environmental tobacco smoke.

21 **SEC. 603. COVERAGE OF CONGRESSIONAL BUILDINGS.**

22 The provisions of Executive Order 13058 (62 FR
23 43451; August 13, 1997) shall apply to any public facility
24 at which a covered employee (as such term is defined in
25 section 101(3) of the Congressional Accountability Act of

1 1995 (2 U.S.C. 1301(3)) performs work. With respect to
2 such facilities, the enforcement provisions of such Execu-
3 tive Order shall be carried out by the Office of Compli-
4 ance.

5 **TITLE VII—MISCELLANEOUS** 6 **PROVISIONS**

7 **SEC. 701. WHISTLEBLOWER PROTECTIONS.**

8 (a) **PROHIBITION OF REPRISALS.**—An employee of
9 any manufacturer, distributor, or retailer of a tobacco
10 product may not be discharged, demoted, or otherwise dis-
11 criminated against (with respect to compensation, terms,
12 conditions, or privileges of employment) as a reprisal for
13 disclosing to an employee of the Food and Drug Adminis-
14 tration, the Department of Health and Human Services,
15 the Department of Justice, or any State or local regu-
16 latory or enforcement authority, information relating to a
17 substantial violation of law related to this Act or a State
18 or local law enacted to further the purposes of this Act.

19 (b) **ENFORCEMENT.**—Any employee or former em-
20 ployee who believes that such employee has been dis-
21 charged, demoted, or otherwise discriminated against in
22 violation of subsection (a) may file a civil action in the
23 appropriate United States district court before the end of
24 the 2-year period beginning on the date of such discharge,
25 demotion, or discrimination.

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

4 (1) reinstate the employee to the employee's
5 former position;

6 (2) pay compensatory damages; or

7 (3) take other appropriate actions to remedy
8 any past discrimination.

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

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

13 (2) knowingly or recklessly provides substan-
14 tially false information to the Food and Drug Ad-
15 ministration, the Department of Health and Human
16 Services, the Department of Justice, or any State or
17 local regulatory or enforcement authority.

18 **SEC. 702. PROHIBITION ON USE OF FUNDS TO FACILITATE**
19 **THE EXPORTATION OR PROMOTION OF TO-**
20 **BACCO.**

21 (a) LIMITATIONS.—

22 (1) IN GENERAL.—Notwithstanding any other
23 provision of law, no funds made available by appro-
24 priations or otherwise made available may be used

1 by any officer, employee, department, or agency of
2 the United States—

3 (A) to challenge tobacco-related laws or
4 regulations in any country if such laws or regu-
5 lations—

6 (i) are based on sound public health
7 principles;

8 (ii) are applied in a nondiscriminatory
9 manner to both imported and domestic to-
10 bacco and tobacco products; and

11 (iii) if sufficient notice (not to exceed
12 6 months) of the application of such laws
13 or regulations has been made public;

14 (B) promote the sale or exportation of to-
15 bacco or tobacco products or to assist the ef-
16 forts of a domestic individual or entity in any
17 such promotion; or

18 (C) to attend or otherwise support recep-
19 tions that feature tobacco products brand
20 names, trade promotions, or any events that are
21 sponsored by individuals or entities involved in
22 the export, manufacture, promotion, distribu-
23 tion or sale of tobacco or tobacco products.

1 (2) REQUIREMENTS.—With respect to tobacco
2 or tobacco products, United States Diplomatic Posts
3 shall—

4 (A) assist and promote tobacco-control ef-
5 forts in foreign countries; and

6 (B) with respect to laws or regulations de-
7 scribed in paragraph (1)(A), refer such laws or
8 regulations to the appropriate trade agencies of
9 the United States if it is suspected that such
10 laws or regulations do not comply with any of
11 the requirements of such paragraph.

12 (b) EXCEPTION.—Subsection (a)(1) shall not apply
13 to any restriction or proposed restriction by a foreign
14 country if—

15 (1) the restriction is applied in a manner which
16 constitutes a means of arbitrary or unjustifiable dis-
17 crimination between countries; and

18 (2) the United States Trade Representative, in
19 conjunction the Secretary of Health and Human
20 Services, determines that—

21 (A) the restriction is being applied in a
22 manner that constitutes a means of arbitrary or
23 unjustifiable discrimination between countries;
24 and

1 (B) that the restriction is not a reasonable
2 means of protecting the public health.

3 (c) REPORTS.—The United States Trade Representa-
4 tive shall include a description of all exceptions made pur-
5 suant to subsection (b) in reports submitted to Congress
6 as required under Federal law prior to the date of enact-
7 ment of this Act.

8 (d) DEFINITION.—In this section, the term “arbi-
9 trary or unjustifiable discrimination” means a restriction
10 or proposed restriction by a foreign country that—

11 (1) is arbitrary or unjustifiable; and

12 (2) does not adhere to the principle of national
13 treatment and applies less favorable treatment to
14 goods that are imported into that country than the
15 country applies to like goods that are the product,
16 growth, or manufacture of that country.

17 **SEC. 703. PROVISIONS RELATING TO NATIVE AMERICANS.**

18 (a) IN GENERAL.—The provisions of this Act (or an
19 amendment made by this Act) shall apply to the manufac-
20 ture, distribution, and sale of tobacco products in any area
21 within the jurisdiction of an Indian tribe or tribal organi-
22 zation.

23 (b) RELIGIOUS PRACTICE EXCEPTION.—In recogni-
24 tion of the religious, traditional and ceremonial uses of
25 tobacco and tobacco products by many Indian tribes and

1 the members of such tribes, nothing in this Act (or an
2 amendment made by this Act) shall be construed to in-
3 fringe upon the rights of such tribes or members to trans-
4 fer, acquire, possess, or use any tobacco or tobacco prod-
5 ucts for such purposes. The preceding sentence shall only
6 be construed to apply to those quantities of tobacco prod-
7 ucts necessary to fulfill recognized religious, traditional or
8 ceremonial purposes and not to permit the general market-
9 ing of tobacco products not in compliance with subchapter
10 F of chapter V of the Federal Food, Drug and Cosmetic
11 Act.

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

16 (d) APPLICATION OF FEDERAL FOOD, DRUG AND
17 COSMETIC ACT REQUIREMENTS.—

18 (1) IN GENERAL.—The Secretary, in consulta-
19 tion with the Secretary of the Interior, shall promul-
20 gate regulations to provide for the application of any
21 requirements of the Food, Drug and Cosmetic Act
22 with respect to tobacco products manufactured, dis-
23 tributed, or sold in any area within the jurisdiction
24 of an Indian tribe or tribal organization as appro-
25 priate to comply with subsections (a) and (b).

1 (2) ELIGIBILITY FOR ASSISTANCE.—Under the
2 regulations promulgated under paragraph (1), the
3 Secretary, after consultation with the Secretary of
4 the Interior, may provide assistance to an Indian
5 tribe or tribal organization in meeting and enforcing
6 the requirements under such regulations if—

7 (A) the tribe or organization has a govern-
8 ing body that has powers and carries out duties
9 that are similar to the powers and duties of
10 State or local governments and requests such
11 assistance by application to the Secretary;

12 (B) the functions to be exercised through
13 the use of such assistance relate to activities
14 within the exterior boundaries of the reservation
15 or other areas within the jurisdiction of the
16 tribe involved; and

17 (C) the tribe or organization is reasonably
18 expected to be capable of carrying out the func-
19 tions required by the Secretary.

20 (3) DETERMINATIONS.—The Secretary, in con-
21 sultation with the Secretary of the Interior, shall
22 make determinations concerning the eligibility of an
23 Indian tribe or tribal organization for assistance
24 under regulations under paragraph (1) not later
25 than 90 days after the date on which such tribe or

1 organization submits an application for such assist-
2 ance.

3 (4) IMPLEMENTATION BY SECRETARY.—If the
4 Secretary determines that the Indian tribe or tribal
5 organization is not willing or qualified to administer
6 the requirements of the regulations promulgated
7 under this subsection, the Secretary, in consultation
8 with the Secretary of the Interior, shall implement
9 and enforce such regulations on behalf of the tribe
10 or organization.

11 (e) RETAIL LICENSING REQUIREMENTS.—

12 (1) IN GENERAL.—The requirements of sub-
13 chapter F of chapter V of the Federal Food, Drug
14 and Cosmetic Act (as added by section 221 of this
15 Act) relating to minors' access to tobacco products
16 shall apply to retailers that sell tobacco products in
17 any area within the jurisdiction of an Indian tribe
18 or tribal organization.

19 (2) SELF-REGULATION.—In order to be eligible
20 for funds under subsection (f), an Indian tribe or
21 tribal organization shall implement a tribal licensing
22 program within the exterior boundaries of the res-
23 ervation and other areas within the jurisdiction of
24 the tribe consistent with the regulations promulgated
25 under such subchapter F of chapter V of the Fed-

1 eral Food, Drug and Cosmetic Act relating to mi-
2 nors' access to tobacco products.

3 (3) IMPLEMENTATION BY SECRETARY.—If the
4 Secretary, in consultation with the Secretary of the
5 Interior, determines that the Indian tribe or tribal
6 organization is not qualified to administer the re-
7 quirements of subchapter F of chapter V of the Fed-
8 eral Food, Drug and Cosmetic Act relating to mi-
9 nors' access to tobacco products, the Secretary, in
10 consultation with the Secretary of the Interior, shall
11 implement such requirements on behalf of the tribe
12 or organization.

13 (f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

14 (1) IN GENERAL.—For each fiscal year the Sec-
15 retary shall pay to each Indian tribe that has an ap-
16 proved tribal anti-smoking plan a tribal grant for
17 the fiscal year in an amount equal to the amount de-
18 termined under paragraph (3), and shall reduce the
19 amounts payable under section 111 to any State in
20 which the service area or areas of the Indian tribe
21 are located by the amount so determined.

22 (2) PLAN.—To be eligible to receive a payment
23 under paragraph (1), an Indian tribe shall prepare
24 and submit to the Secretary for approval an anti-

1 smoking plan and shall otherwise meet the require-
2 ments of subsection (e).

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

11 (4) USE.—Amounts provided to a tribe or orga-
12 nization under this paragraph shall be used to reim-
13 burse the tribe for smoking-related health expendi-
14 tures, to further the purposes of this Act, and in ac-
15 cordance with a plan submitted by the tribe or orga-
16 nization and approved by the Secretary as being in
17 compliance with this Act. Tribes and tribal organiza-
18 tions shall have the flexibility to utilize such
19 amounts to meet the unique health needs of such
20 tribes within the context of tribal health programs if
21 such programs meet the fundamental Federal re-
22 quirements under this Act as determined by the Sec-
23 retary.

24 (5) REALLOTMENT.—Any amounts set-aside
25 and not expended under this paragraph shall be re-

1 allotted among other eligible tribes and organiza-
2 tions.

3 (g) OBLIGATION OF MANUFACTURERS.—A partici-
4 pating manufacturer shall not engage in any activity in
5 an area within the jurisdiction of an Indian tribe or tribal
6 organization that is prohibited under this Act.

7 (h) INDIAN HEALTH SERVICE.—Amounts made
8 available under section 101(d)(2)(D) shall be provided to
9 the Indian Health Service to be used for anti-tobacco-re-
10 lated consumption and cessation activities including—

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

13 (2) provider services and equipment;

14 (3) domestic and community sanitation associ-
15 ated with clinic and facility construction and im-
16 provement;

17 (4) inpatient and outpatient services; and

18 (5) other programs and services provided
19 through the Indian Health Service or through tribal
20 contracts, compacts, grants or cooperative agree-
21 ments with the Indian Health Service and which are
22 deemed appropriate to raising the health status of
23 Indians.

24 (i) PREEMPTION.—

1 (1) GENERAL PREEMPTION.—Except as other-
2 wise provided for in this section, nothing in this Act
3 shall be construed as prohibiting an Indian tribe or
4 tribal organization from imposing requirements, pro-
5 hibitions, penalties or other measures to further the
6 purposes of this Act that are in addition to the re-
7 quirements, prohibitions, or penalties required under
8 this Act.

9 (2) PUBLIC EXPOSURE TO SMOKE.—Nothing in
10 the amendment made by title V shall be construed
11 to preempt or otherwise affect any Indian tribe or
12 tribal organization rule or practice that provides
13 greater protection from the health hazards of envi-
14 ronmental tobacco smoke.

15 (3) NATIVE AMERICANS.—A State may not im-
16 pose obligations or requirements relating to the ap-
17 plication of this Act to Indian tribes and tribal orga-
18 nizations.

19 **SEC. 704. PRESERVATION OF STATE AND LOCAL AUTHOR-**
20 **ITY.**

21 Except as otherwise provided for in this Act (or an
22 amendment made by this Act), nothing in this Act shall
23 be construed as prohibiting a State from imposing require-
24 ments, prohibitions, penalties or other measures to further
25 the purposes of this Act that are in addition to the re-

1 quirements, prohibitions, or penalties required under this
2 Act. To the extent not inconsistent with the purposes of
3 this Act, State and local governments may impose addi-
4 tional tobacco product control measures to further restrict
5 or limit the use of such products by minors, except that
6 such State and local governments may not impose any la-
7 beling requirements in addition to those required under
8 Federal law.

Tobacco - new legislation -
Harkin/Chafee

Harkin/Chafee

Additional Questions re. Consent Decrees

1. Which of the marketing and advertising restrictions must be in consent decrees, which can be in statute? Should all be in both statute and in the consent decrees? ~~Correct~~
1st choice - none in stat
2nd choice - ~~stat~~
2. Can a third party challenge a consent decree between the tobacco industry and the fed. Govt. on 1st amendment grounds? Yes? problem w/ retailers?
3. Assume that a 3rd party has standing to challenge a consent decree. Also assume that a marketing or advertising restriction is then held unconstitutional.

Q: How do we make provisions for this in our bill? Can the industry and the govt. then "reagree" somehow outside of the original consent decrees? If so, do they (the industry) need an anti-trust exemption to reagree on the basis of restraint of trade?

Consent decrees -

condition A w/ or w/o both states + manus
should we do this?

What to say about conditional waiver of AC priv?

condition (A) appear in all bills?

very smart

condition (B) - want a mand. pass-through?

condition (C) - specifically say the intent?

cond (D) - lobbying etc.

DISCUSSION DRAFT

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114

1 private agreements with respect to the allocation or divi-
2 sion of fees among the attorneys party to any such agree-
3 ment.

4 (d) LIMITATION.—Notwithstanding any other provi-
5 sion of law, in no event shall the amount of attorneys'
6 fees awarded under this section for a fiscal year exceed
7 an amount equal to 5 percent of the amount paid to the
8 Trust Fund under section 102 for the fiscal year. Any
9 amounts in excess of such amount may be collected in sub-
10 sequent fiscal years subject to the 5 percent limitation
11 with respect to each such fiscal year. The manufacturer
12 signatories to the Protocol shall be responsible for the pay-
13 ment of all such attorneys' fees and such payments shall
14 not be counted against the fee payments to be made under
15 section 102 nor shall they be drawn from the National
16 Tobacco Settlement Trust Fund.

17 (e) DISCLOSURE.—The Secretary shall promulgate
18 regulations for the public disclosure of any award of attor-
19 neys' fees under this section.

20 **SEC. 404. NATIONAL TOBACCO DOCUMENT DEPOSITORY.**

21 (a) ESTABLISHMENT.—

22 (1) GRANT.—The Attorney General, in con-
23 sultation with the Secretary, shall award a grant for
24 the establishment and operation of a National To-
25 bacco Document Depository (in this section referred

1 to as the "Depository"). Such Depository shall be lo-
2 cated in the Washington, D.C. area and be open to
3 the public.

4 (2) LIMITATION.—In awarding the grant under
5 paragraph (1), the Attorney General shall ensure
6 that the grantee is a nongovernmental entity with no
7 connection to any tobacco product manufacturer,
8 distributor or retailer.

9 (b) USE OF DEPOSITORY.—The Depository shall be
10 maintained in a manner that permits the Depository to
11 be used as a resource for litigants, public health groups,
12 and any other individuals who have an interest in the cor-
13 porate records and research of the manufacturers concern-
14 ing smoking and health, addiction or nicotine dependency,
15 safer or less hazardous cigarettes, and underage tobacco
16 use and marketing.

17 (c) SUBMISSION OF DOCUMENTS.—To be eligible to
18 participate in the victims' compensation program under
19 section 401, a manufacturer of tobacco products shall—

20 (1) agree to waive the attorney-client privilege
21 as to all documents relating to the health effects,
22 safety, and marketing of tobacco products to chil-
23 dren and provide those documents to the Depository;

24 (2) provide all documents otherwise discovered
25 in connection with any civil action to the Depository;

*

including, but not limited to.

1 (3) index any documents provided to the Depos-
2 itory in a manner that would make such documents
3 easily accessible and usable by plaintiffs in civil ac-
4 tions and researchers; and

5 (4) provide such other documents as the Attor-
6 ney General determines appropriate to the Deposi-
7 tory.

8 **Subtitle B—Consent Decrees**

9 **SEC. 411. CONSENT DECREES.**

10 (a) REQUIREMENT.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), to be eligible to receive payments under
13 section 111, a State, and to be eligible to receive the
14 damages protections under section 401, a tobacco
15 manufacturer, shall enter into consent decrees under
16 this section to be effective on the date of enactment
17 of this Act.

18 (2) GOOD FAITH EFFORTS.—The limitation de-
19 scribed in paragraph (1) with respect to payments
20 under section 111 shall not apply to a State if the
21 attorney general of the State certifies to the Sec-
22 retary that—

23 (A) the State has made good faith efforts
24 to enter into a consent decree in accordance
25 with this subtitle; and

1 (B) such State is willing to be bound by
2 such decree but such decree does not exist be-
3 cause—

4 (i) of the refusal on the part of a to-
5 bacco manufacturer to enter into such de-
6 cree; or

7 (ii) the appropriate court has not en-
8 tered the decree even though the parties
9 have lodged such a decree with the court.

10 (b) TERMS AND CONDITIONS.—

11 (1) IN GENERAL.—The terms and conditions
12 contained in the consent decrees described in sub-
13 section (a) shall contain provisions relating to—

14 (A) an agreement not to directly or indi-
15 rectly pursue or support legal challenges to the
16 implementation of any aspect of this Act (or an
17 amendment made by this Act), including any
18 existing or future regulatory authority under
19 the Federal Food, Drug and Cosmetic Act, any
20 document disclosure requirements, any survey
21 methodology used or penalties applied under
22 title III, and any advertising and marketing re-
23 strictions;

24 (B) an agreement to pass-through the
25 costs of the assessments made under section

1 102 to consumer through increases in the prices
2 of tobacco products;

3 (C) restrictions on tobacco product adver-
4 tising and marketing and youth access to such
5 products, including an agreement not to adver-
6 tise on the Internet;

7 (D) the termination, establishment, and
8 operation of trade associations; and an agree-
9 ment not to lobby Federal, State or local gov-
10 ernments against any provision of this Act;

11 (E) the disclosure of tobacco smoke con-
12 stituents;

13 (F) the disclosure of nontobacco constitu-
14 ents and ingredients found in tobacco products;

15 (G) the disclosure of existing and future
16 documents relating to health, toxicity, and ad-
17 diction related to tobacco product usage;

18 (H) the obligation of manufacturers to
19 make payments for the benefit of States, pri-
20 vate litigants and the general public;

21 (I) the obligation of manufacturers to
22 interact only with distributors and retailers that
23 operate in compliance with the applicable provi-
24 sions of Federal, State, or local law regarding
25 the marketing and sale of tobacco products;

Tob - set - new legislative -
~~to~~ Harkin/Chafee



Cynthia A. Rice

04/01/98 07:29:41 PM

Record Type: Record

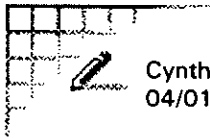
To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc:

Subject: harkin-chafee

fyi

----- Forwarded by Cynthia A. Rice/OPD/EOP on 04/01/98 07:30 PM -----



Cynthia Dailard

04/01/98 05:07:32 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:

Subject: harkin-chafee

The Harkin-Chafee-Graham bill contains the language we proposed in the following areas:

1. Youth look back penalties -- version 1 (p. 43)
2. FDA jurisdiction (p. 61)
3. Licensing and smuggling (p.101)
(This section contains only the Treasury language, but not the FDA language.) (p.101)
4. Document disclosure (p.404)

The bill does not contain our spending or assessment language.

In addition, the provisions on international tobacco control funding (p.172) and promotion of tobacco products overseas ("modified-Doggett"; p. 218) appear to be less problematic than the language contained in the McCain bill. I will work with Sherman to further analyze these provisions.

On the subject of environmental tobacco smoke, the bill does not propose national standards to promote smoke-free environments, but instead provides funding to the states for activities related to the reduction of ETS and education regarding the health risks of ETS (p.216).

Tob - ext - uw legis -
Harkin/Chafee

March 11, 1998

cc: EK, CR
+ return

The Honorable Tom Harkin
The Honorable John Chafee
The Honorable Bob Graham
United States Senate
Washington, DC 20510

Dear Senators Harkin, Chafee and Graham:

We are sorry we are not able to be with you in person as you introduce your bill, but we wanted to offer our congratulations to you for crafting a very strong, comprehensive package of tobacco reforms.

We have carefully reviewed a detailed summary of your plan and strongly support its major features, with the exception of the concept of liability caps. While we await actual legislative language, it appears to us that if enacted, we believe your proposal includes many measures that would significantly reduce tobacco use and fundamentally alter the way America deals with tobacco. It is tough medicine for a tough problem. It would set national tobacco policy on to a course that would bring down nicotine addiction and the terrible health consequences of using tobacco.

You are to be especially commended for forging a bipartisan consensus on this difficult and complex issue. For a proposal to be successful in Congress, it must have bipartisan support. Yours is the first to meet that crucial test.

Your plan correctly deals with this public health crisis in a comprehensive manner, seeking to come as close as possible at this time to the ideals expressed last July in the report of the *Advisory Committee on Tobacco Policy and Public Health*. A piecemeal approach clearly won't work. We are especially pleased that you specify an increase in the cost of tobacco products within two years. This is vitally important for reducing tobacco use by young people. Protecting the FDA's authority, protecting a State's ability to develop and enforce stronger public health measures, and other such provisions make this proposal very attractive. We understand that you will address environmental tobacco smoke and we will be pleased to work with you on that. You are also to be commended for recognizing that the United States must play an enhanced role in promoting enlightened policies toward tobacco in other countries. We have a moral imperative to lead in this area as well as protecting the public health within the United States.

We look forward to continuing to work with you as you finalize this very promising proposal. There is much to be done this year, but the announcement of your bipartisan effort is a major step forward in our long battle for a tobacco policy.

Sincerely,


C. Everett Koop, M.D., Sc.D.


David A. Kessler, M.D.

Tobacco - no. 1000000000
New Legislation
Harkin/Chafee



THE VICE PRESIDENT
WASHINGTON

March 12, 1998

The Honorable Tom Harkin
The Honorable John Chafee
The Honorable Bob Graham
U.S. Senate
Washington, D.C. 20510

Dear Senators Harkin, Chafee and Graham:

Congratulations on your introduction of the first bipartisan comprehensive bill to drastically reduce youth smoking which encompasses the President's five principles. I regret that I cannot be there with you today as we take another crucial step forward in the fight to protect young people from the addiction and disease of tobacco and the next big step toward writing tough anti-tobacco measures into law.

We all know that ultimately any successful bill must have broad bipartisan support. I have been pleased to see that support for tough anti-tobacco measures crosses all lines of party and politics. Now, we must seize this historic opportunity, and build on this growing coalition.

The President and I look forward to working with you and others in the Congress to enact tough anti-tobacco legislation this year. We would like to work with you to ensure that any legislation sent to the President encompasses the five principles he has outlined: (1) a price increase of up to \$1.50 per pack and tough penalties if youth smoking reduction targets are not met; (2) reaffirmation of the FDA's authority to regulate tobacco products; (3) changes to the way the industry does business so it will no longer market its products to children; (4) progress toward other public health goals; and (5) protection of tobacco farmers and their communities. Further, we look forward to working with you to ensure that the revenues raised through any tobacco legislation will be invested in programs, which the President has outlined, to benefit our children.

The President and I want this Congress to be remembered as the Congress that finally protects our children from nicotine addiction and disease - and gives America the healthy kids and families we deserve.

Sincerely,

Al Gore

AG/td

- DRAFT -

Bob - settlement -
new legislation -
Harkin/Chafee

March 12, 1998

Senator Tom Harkin
Senator John Chafee
Senator Bob Graham
U.S. Senate
Washington, D.C. 20501

Dear Senators Harkin, Chafee and Graham:

Congratulations on your introduction of the first bipartisan comprehensive bill to drastically reduce youth smoking which encompasses the President's five principles. I regret that I cannot be there with you today as we take another crucial step forward in the fight to protect young people from the addiction and disease of tobacco and the next big step toward writing tough anti-tobacco measures into law.

We all know that ultimately any successful bill must have broad bipartisan support. I have been pleased to see that support for tough anti-tobacco measures crosses all lines of party and politics. Now, we must seize this historic opportunity, and build on this growing coalition.

The President and I look forward to working with you and other in the Congress to enact tough anti-tobacco legislation this year. We would like to work with you to ensure that any legislation sent to the President encompasses the five principles he has outlined: (1) a price increase of up to \$1.50 per pack and tough penalties if youth smoking reduction targets are not met; (2) reaffirmation of the FDA's authority to regulate tobacco products; (3) changes to the way the industry does business so it will no longer market its products to children; (4) progress toward other public health goals; and (5) protection of tobacco farmers and their communities. Further, we look forward to working with you to ensure that the revenues raised through any tobacco legislation will be invested in programs to benefit our children which the President has outlined.

The President and I want this Congress to be remembered as the Congress that finally protects our children from nicotine addiction and disease - and gives American the healthy kids and families we deserve.

GORE

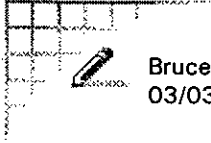
Tobacco - mtrk -
new legislative -
Harkin-Chafee

**Statement on Harkin-Chafee
March 10, 1998**

Today, Senators Harkin, Chafee, and Graham proposed the first comprehensive, bipartisan tobacco legislation that will dramatically reduce youth smoking. This proposal includes the five elements I said last September I would insist upon: (1) a price increase of up to \$1.50 per pack and tough penalties if youth smoking reduction targets are not met; (2) reaffirmation of the FDA's authority to regulate tobacco products; (3) changes to the way the industry does business so it will no longer market its products to children; (4) progress toward other public health goals; and (5) protection of tobacco farmers and their communities.

I strongly support this effort, and I look forward to working with the Senators to ensure that their spending plans include the proposals affecting children and health care I included in my budget. Their bipartisan proposal is an important step toward enacting comprehensive tobacco legislation that will save the lives of our children.

Tobacco - implement -
new legislation -
Harkin/Chafee




Bruce N. Reed
03/03/98 12:47:40 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP

cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Mary L. Smith/OPD/EOP

Subject: Re: Harkin and Tobacco Farmers 

When we say nice things on Harkin-Chafee, we should be sure to include caveats on spending and farmers.