

Tobacco Legislation

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S 1415 IS

105th CONGRESS

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S. 1415

To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

IN THE SENATE OF THE UNITED STATES**November 7, 1997**

Mr. MCCAIN (for himself, Mr. HOLLINGS, Mr. BREAUX, and Mr. GORTON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'Universal Tobacco Settlement Act'.

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

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TITLE V--CONSENT DECREES, NON-PARTICIPATING MANUFACTURERS, AND STATE ENFORCEMENT

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Sec. 511. Consent decrees.

Sec. 512. National tobacco control protocol.

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SEC. 2. FINDINGS.

(a) GENERAL FINDINGS- Congress makes the following findings:

(1) The Food and Drug Administration and other public health authorities view the use of tobacco products by the nation's children as a 'pediatric disease' of epic and worsening proportions that results in new generations of tobacco-dependent children and adults.

(2) There is a consensus within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) The Food and Drug Administration and other health authorities have concluded that virtually all new users of tobacco products are under the age of 18. Virtually all Federal, State, and local officials and entities believe that tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents and as such, sweeping new restriction on the sale, promotion, and distribution of such products are needed.

(4) Federal, State, and local governments lack many of the legal means and resources needed to address the societal problems caused by the use of tobacco products.

(5) Public health authorities believe that the societal benefits of enacting tobacco settlement legislation in human and economic terms would be vast. The Food and Drug Administration found that reducing underage tobacco use 50 percent 'would prevent well over 60,000 early deaths'. The Food and Drug Administration has estimated that the monetary value of the regulations promulgated as a result of this Act will be worth up to \$43,000,000,000 per year in reduced medical costs, improved productivity, and the benefit of avoiding the premature death of loved ones.

(6) The unique position occupied by tobacco in the history and economy of the United States, the magnitude of the actual and potential tobacco-related litigation, the need to avoid the cost, expense, uncertainty, and inconsistency associated with such protracted litigation, the need to limit the sale, distribution, marketing, and advertising of tobacco products to persons of legal age, and the need to educate the public (especially young people) of the health effects of using tobacco products all dictate that it would be in the public interest to enact legislation to facilitate a resolution of such matters.

(b) FINDINGS RELATED TO INTERSTATE COMMERCE AND THE JUDICIAL SYSTEM- Congress makes the following findings:

(1) The sale, distribution, marketing, advertising, and use of tobacco products are activities substantially affecting interstate commerce. Such products are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis and have a substantial effect on the economy of the United States.

(2) The sale, distribution, marketing, advertising, and use of tobacco products are activities that substantially affect interstate commerce by virtue of the health care and other costs that Federal and State governmental authorities have incurred because of the usage of tobacco products.

(3) Various civil actions brought by State attorneys general, cities, counties, the Commonwealth of Puerto Rico, third-party payors, and other private classes and individuals to recover damages relating to tobacco-related diseases, conditions and products are pending throughout the United States, of these actions are slow-moving, expensive, and burdensome not only for the litigants but also for Federal and State judicial systems.

SEC. 3. PURPOSES.

It is the purpose of this Act to--

- (1) reiterate and enhance the authority of the Food and Drug Administration to regulate tobacco products and provide for tobacco industry funding of the oversight activities of the Administration;
- (2) ban all outdoor tobacco advertising and ban all cartoon characters and human figures used in connection with tobacco advertising;
- (3) provide for the funding by the tobacco industry of an aggressive Federal enforcement program relating to tobacco advertising and distribution, including a State-administered retail licensing system to prevent minors from obtaining tobacco products;
- (4) subject the tobacco industry to severe financial penalties in the event that underage tobacco usage does not decline radically over the next 10 years;
- (5) provide for the establishment of national standards to control the manufacturing of tobacco products and the ingredients used in such products;
- (6) provide certain regulatory powers to the Food and Drug Administration to encourage the development and marketing by the tobacco industry of 'less hazardous tobacco products', including the

power to regulate the level of nicotine in such products;

- (7) require the manufacturers of tobacco products to disclose all present and future non-public internal laboratory research regarding tobacco products;
- (8) establish a minimum Federal standard to limit smoking in public places;
- (9) provide for the establishment of a National Tobacco Settlement Trust Fund to be funded by the tobacco industry and used in accordance with this Act;
- (10) provide for the establishment of a national education-oriented counter advertising and tobacco control campaign to be funded through the National Tobacco Settlement Trust Fund;
- (11) provide annual payments to States to fund health benefits programs and to create a tobacco products liability judgments and settlements fund to be funded through the National Tobacco Settlement Trust Fund; and
- (12) provide for the establishment of a national program of smoking cessation to be funded through the National Tobacco Settlement Trust Fund.

TITLE I--REGULATION OF THE TOBACCO INDUSTRY

SEC. 100. DEFINITIONS.

In this Act:

(1) **BRAND**- The term 'brand' means a variety of a tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging.

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

(3) **CIGARETTE**- The term 'cigarette' means any product which contains nicotine, is intended to be burned under ordinary conditions of use, and consists of--

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

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

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

(5) **CIGARETTE TOBACCO**- The term 'cigarette tobacco' means any product that consists of loose tobacco that contains or delivers nicotine and is intended for use by persons in a cigarette. Unless otherwise stated, the requirements of this Act pertaining to cigarettes shall also apply to cigarette tobacco.

(6) **COMMERCE**- The term 'commerce' means--

(A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands or any territory or possession of the United States;

(B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands or any territory or possession of the United States; or

(C) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, or any territory or possession of the United States.

(7) **COMMISSIONER**- The term 'Commissioner' means the Commissioner of Food and Drugs.

(8) **DISTRIBUTOR**- The term 'distributor' means any person who furthers the distribution of tobacco products, whether domestic or imported, at any point from the

original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Such term shall not include common carriers.

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

(10) **MANUFACTURER**- The term 'manufacturer' means any person, including any repacker or

relabeler, who manufactures, fabricates, assembles, processes, or labels a finished tobacco product.

(11) **NICOTINE**- The term 'nicotine' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C10H14N2, including any salt or complex of nicotine.

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

(13) **PERSON**- The term 'person' means an individual, partnership, corporation, or any other business or legal entity.

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

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

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

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

(18) **SECRETARY**- The term 'Secretary' means the Secretary of Health and Human Services.

(19) **SMOKELESS TOBACCO**- The term 'smokeless tobacco' means any product that consists of cut, ground, powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral or nasal cavity.

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

(21) **TOBACCO**- The term 'tobacco' means tobacco in its unmanufactured form.

(22) **TOBACCO PRODUCT**- The term 'tobacco product' means cigars, cigarettes, cigarillos, cigarette tobacco, little cigars, pipe tobacco, and smokeless tobacco.

(23) TRUST FUND- The term 'Trust Fund' means the National Tobacco Settlement Trust Fund established under section 401.

Subtitle A--Restriction on Marketing and Advertising

SEC. 101. PROHIBITIONS ON ADVERTISING.

(a) PROHIBITION ON OUTDOOR ADVERTISING-

(1) IN GENERAL- No manufacturer, distributor, or retailer may use any form of outdoor tobacco product advertising, including billboards, posters, or placards.

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

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

(c) PROHIBITION ON ADVERTISING ON THE INTERNET- No manufacturer, distributor, or retailer may use the Internet to advertise tobacco products unless such an advertisement is inaccessible in or from the United States.

(d) PROHIBITION ON POINT-OF-SALE ADVERTISING-

(1) IN GENERAL- Except as otherwise provided in this subsection, no manufacturer, distributor, or retailer may use point-of-sale advertising of tobacco products.

(2) ADULT-ONLY STORES AND TOBACCO OUTLETS- Paragraph (1) shall not apply to point of sale advertising at adult-only stores and tobacco outlets.

(3) PERMISSIBLE ADVERTISING-

(A) IN GENERAL- Each manufacturer of tobacco products may display not more than 2 separate point-of-sale advertisements in or at each location at which tobacco products are offered for sale.

(B) MARKET SHARE MANUFACTURERS- A manufacturer with at least 25 percent of the market share of the tobacco product involved may display an additional point-of-sale advertisement in or at each location at which tobacco products are offered for sale.

(C) RETAILERS- A retailer may have not more than 1 point-of-sale advertisement relating to the retailer's own or its wholesaler's contracted retailer or private label brand of tobacco product. No manufacturer or distributor may enter into any arrangement with a retailer to limit the ability of the retailer to display any form of permissible point-of-sale advertisement or promotional material originating with another manufacturer or distributor.

(4) LIMITATIONS-

(A) IN GENERAL- A point of sale advertisement permitted under this subsection shall be comprised of a display area that is not larger than 576 square inches (either individually or in the aggregate) and shall consist only of black letters on a white background or other recognized typographical marks. Such advertisement shall not be attached to nor located within 2 feet of any fixture on which candy is displayed for sale.

(B) AUDIO AND VIDEO FORMATS- Audio and video advertisements permitted under section 103(c) may be distributed to individuals who are 18 years of age or older at point of sale but may not be played or viewed at such point of sale.

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

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

SEC. 102. GENERAL RESTRICTIONS.

(a) RESTRICTION ON PRODUCT NAMES- A manufacturer shall not use a trade or brand name of a nontobacco product as the trade or brand name for a cigarette or smokeless tobacco product, except for a tobacco product whose trade or brand name was on both a tobacco product and a nontobacco product that were sold in the United States on or before January 1, 1995.

(b) ADVERTISING LIMITED TO FDA SPECIFIED MEDIA-

(1) IN GENERAL- A manufacturer, distributor, or retailer may, in accordance with this title, disseminate or cause to be disseminated advertising or labeling which bears a tobacco product brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification only in newspapers, in magazines, in periodicals or other publications (whether periodic or limited distribution), on billboards, posters and placards in accordance with section 101(a), in nonpoint-of-sale promotional material (including direct mail), in point-of-sale promotional material, and in audio or video formats delivered at a point-of-sale.

(2) LIMITATION- A manufacturer, distributor, or retailer that intends to disseminate, or to cause to be disseminated, advertising or labeling for a tobacco product in a medium that is not described in paragraph (1) shall notify the Commissioner not less than 30 days prior to the date on which such medium is to be used. Such notice shall describe the medium and discuss the extent to which the advertising or labeling may be seen by individuals who are under 18 years of age.

(3) Action by commissioner-

(c) RESTRICTION ON PLACEMENT IN ENTERTAINMENT MEDIA-

(1) IN GENERAL- No payment shall be made by any manufacturer, distributor, or

retailer for the placement of any tobacco product or tobacco product package or advertisement--

(A) as a prop in any television program or motion picture produced for viewing by the general public; or

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

(2) VIDEO GAME- The term 'video game' means any electronic amusement device that utilizes a computer, microprocessor, or similar electronic circuitry and its own cathode ray tube, or is designed to be used with a television set or a monitor, that interacts with the user of the device.

(d) RESTRICTIONS ON GLAMORIZATION OF TOBACCO PRODUCTS- No direct or indirect payment shall be made by any manufacturer, distributor, or retailer to any entity for the purpose of promoting the image or use of a tobacco product through print or film media that appeals to individuals under 18 years of age or through a live performance by an entertainment artist that appeals to such individuals.

SEC. 103. FORMAT AND CONTENT REQUIREMENTS FOR LABELING AND ADVERTISING.

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

(b) CERTAIN ADVERTISING EXCEPTED-

(1) IN GENERAL- Subsection (a) shall not apply to advertising--

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

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

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

(B) that appears in any publication (whether periodic, limited, or controlled distribution) that the manufacturer, distributor, or retailer demonstrates is an adult publication.

(2) ADULT PUBLICATION- For purposes of paragraph (1)(B), the term 'adult publication' means a newspaper, magazine, periodical, or other publication--

(A) whose readers under 18 years of age constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence; and

(B) that is read by fewer than 2,000,000 individuals who are under 18 years of age as measured by competent and reliable survey evidence.

(c) AUDIO OR VIDEO FORMATS- Each manufacturer, distributor, and retailer advertising or causing to be advertised any advertising for a tobacco product in an audio or video format

shall comply with the following:

- (1) With respect to an audio format, the advertising shall be limited to words only with no music or sound effects.
- (2) With respect to a video format, the advertising shall be limited to static black text only on a white background. Any audio with the video advertising shall be limited to words only with no music or sound effects.

SEC. 104. STATEMENT OF INTENDED USE.

(a) **REQUIREMENT-** Each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, advertising concerning cigarettes, cigarette tobacco, or smokeless tobacco products otherwise permitted under this title shall include, as provided in section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352), the established name of the product and a statement of the intended use of the product as provided for in subsection (b).

(b) USE STATEMENTS-

(1) **CIGARETTES-** A statement of intended use for cigarettes or cigarette tobacco is as follows (whichever is appropriate):

Cigarettes--A Nicotine-Delivery Device for Persons 18 or Older.

Cigarette Tobacco--A Nicotine-Delivery Device for Persons 18 or Older.

(2) **SMOKELESS TOBACCO-** A statement of intended use for a smokeless tobacco product is as follows (whichever is appropriate):

Loose Leaf Chewing Tobacco--A Nicotine-Delivery Device for Persons 18 or Older.

Plug Chewing Tobacco--A Nicotine-Delivery Device for Persons 18 or Older.

Twist Chewing Tobacco--A Nicotine-Delivery Device for Persons 18 or Older.

Moist Snuff--A Nicotine-Delivery Device for Persons 18 or Older.

Dry Snuff--A Nicotine-Delivery Device for Persons 18 or Older.

(c) **TYPE AND LOCATION-** Requirements with respect to type size, style, font, and location shall be determined by the Commissioner.

SEC. 105. BAN ON NONTOBACCO ITEMS AND SERVICES, CONTESTS AND GAMES OF CHANCE, AND SPONSORSHIP OF EVENTS.

(a) **BAN ON ALL NONTOBACCO MERCHANDISE-** No manufacturer, importer, distributor, or retailer shall market, license, distribute, sell, or cause to be marketed, licensed, distributed or sold any item (other than tobacco products) or service which bears the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification similar or identifiable to those used for any brand of tobacco products.

(b) GIFTS, CONTESTS, AND LOTTERIES- No manufacturer, distributor, or retailer shall offer or cause to be offered to any person purchasing tobacco products any gift or item (other than a tobacco product) in consideration of the purchase of such products, or to any person in consideration of furnishing evidence, such as credits, proofs-of-purchase, or coupons, of such a purchase.

(c) SPONSORSHIP-

(1) IN GENERAL- No manufacturer, distributor, or retailer shall sponsor or cause to be sponsored any athletic, musical, artistic, or other social or cultural event, or any entry or team in any event, in which the brand name (alone or in conjunction with any other word), logo, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification similar or identical to those used for tobacco products is used.

(2) USE OF CORPORATE NAME- A manufacturer, distributor, or retailer may sponsor or cause to be sponsored any athletic, musical, artistic, or other social or cultural event in the name of the corporation which manufactures the tobacco product if--

(A) both the corporate name and the corporation were registered and in use in the United States prior to January 1, 1995; and

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

SEC. 106. USE OF PRODUCT DESCRIPTORS.

(a) IN GENERAL- With respect to a tobacco product, the label of which bears a product description (such as 'light' or 'low tar'), such label shall also contain, and any advertisement concerning such product shall contain, a mandatory disclaimer, to be established by the Secretary, that states that such product has not been shown to be less hazardous than another product of that type.

(b) RULE OF CONSTRUCTION- Nothing in this section shall be construed to limit the authority of the Food and Drug Administration with respect to words used as product descriptors.

Subtitle B--Warnings, Labeling and Packaging

SEC. 111. CIGARETTE WARNINGS.

(a) IN GENERAL-

(1) PACKAGING- It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

WARNING: Cigarettes Are Addictive.

WARNING: Tobacco Smoke Can Harm Your Children.

WARNING: Cigarettes Cause Fatal Lung Disease.

WARNING: Cigarettes Cause Cancer.

WARNING: Cigarettes Cause Strokes And Heart Disease.

WARNING: Smoking During Pregnancy Can Harm Your Baby.

WARNING: Smoking Can Kill You.

WARNING: Tobacco Smoke Causes Fatal Lung Disease In Nonsmokers.

WARNING: Quitting Smoking Now Greatly Reduces Serious Risks To Your Health.

(2) ADVERTISING- It shall be unlawful for any manufacturer or importer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless the advertising bears, in accordance with the requirements of this section, one of the following labels:

WARNING: Cigarettes Are Addictive.

WARNING: Tobacco Smoke Can Harm Your Children.

WARNING: Cigarettes Cause Fatal Lung Disease.

WARNING: Cigarettes Cause Cancer.

WARNING: Cigarettes Cause Strokes And Heart Disease.

WARNING: Smoking During Pregnancy Can Harm Your Baby.

WARNING: Smoking Can Kill You.

WARNING: Tobacco Smoke Causes Fatal Lung Disease In Nonsmokers.

WARNING: Quitting Smoking Now Greatly Reduces Serious Risks To Your Health.

(b) REQUIREMENTS FOR LABELING-

(1) LOCATION- Each label statement required by paragraph (1) of subsection (a) shall be located on the upper portion of the front panel of the cigarette package (or carton) and occupy not less than 25 percent of such front panel.

(2) TYPE AND COLOR- With respect to each label statement required by paragraph (1) of subsection (a), the phrase 'WARNING' shall appear in capital letters and the label statement shall be printed in 17 point type with adjustments as determined appropriate by the Commissioner to reflect the length of the required statement. All the letters in the label shall appear in conspicuous and legible type, in contrast by typography, layout, or color with

all other printed material on the package, and be printed in an alternating black-on-white and white-on-black format as determined appropriate by the Commissioner.

(3) EXCEPTION- The provisions of paragraph (1) shall not apply in the case of a flip-top cigarette package (offered for sale on the date of enactment of this Act) where the front portion of the flip-top does not comprise at least 25 percent of the front panel. In the case of such a package, the label statement required by paragraph (1) of subsection (a) shall occupy the entire front portion of the flip top.

(c) REQUIREMENTS FOR ADVERTISING-

(1) LOCATION- Each label statement required by paragraph (2) of subsection (a) shall occupy not less than 20 percent of the area of the advertisement involved.

(2) TYPE AND COLOR-

(A) TYPE- With respect to each label statement required by paragraph (2) of subsection (a), the phrase 'WARNING' shall appear in capital letters and the label statement shall be printed in the following types:

(i) With respect to whole page advertisements on broadsheet newspaper--45 point type.

(ii) With respect to half page advertisements on broadsheet newspaper--39 point type.

(iii) With respect to whole page advertisements on tabloid newspaper--39 point type.

(iv) With respect to half page advertisements on tabloid newspaper--27 point type.

(v) With respect to DPS magazine advertisements--31.5 point type.

(vi) With respect to whole page magazine advertisements--31.5 point type.

(vii) With respect to 28cm x 3 column advertisements--22.5 point type.

(viii) With respect to 20cm x 2 column advertisements--15 point type.

The Commissioner may revise the required type sizes as the Commissioner determines appropriate within the 20 percent requirement.

(B) COLOR- All the letters in the label under this paragraph shall appear in conspicuous and legible type, in contrast by typography, layout, or color with all other printed material on the package, and be printed in an alternating black-on-white and white-on-black format as determined appropriate by the Commissioner.

(d) ROTATION OF LABEL STATEMENTS-

(1) IN GENERAL- Except as provided in paragraph (2), the label statements specified in paragraphs (1) and (2) of subsection (a) shall be rotated by each manufacturer or

importer of cigarettes quarterly in alternating sequence on packages of each brand of cigarettes manufactured by the manufacturer or importer and in the advertisements for each such brand of cigarettes in accordance with a plan submitted by the manufacturer or importer and approved by the Federal Trade Commission. The Federal Trade Commission shall approve a plan submitted by a manufacturer or importer of cigarettes which will provide the rotation required by this subsection and which assures that all of the labels required by paragraphs (1) and (2) will be displayed by the manufacturer or importer at the same time.

(2) APPLICATION OF OTHER ROTATION REQUIREMENTS-

(A) IN GENERAL- A manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation described in subparagraph (C) apply with respect to a brand style of cigarettes manufactured or imported by such manufacturer or importer if--

(i) the number of cigarettes of such brand style sold in the fiscal year of the manufacturer or importer preceding the submission of the application is less than 1/4 of 1 percent of all the cigarettes sold in the United States in such year; and

(ii) more than 1/2 of the cigarettes manufactured or imported by such manufacturer or importer for sale in the United States are packaged into brand styles which meet the requirements of clause (i).

If an application is approved by the Commission, the label rotation described in subparagraph (C) shall apply with respect to the applicant during the 1-year period beginning on the date of the application approval.

(B) PLAN- An applicant under subparagraph (A) shall include in its application a plan

under which the label statements specified in paragraph (1) of subsection (a) will be rotated by the applicant manufacturer or importer in accordance with the label rotation described in subparagraph (C).

(C) OTHER ROTATION REQUIREMENTS- Under the label rotation which the manufacturer or importer with an approved application may put into effect, each of the labels specified in paragraph (1) of subsection (a) shall appear on the packages of each brand style of cigarettes with respect to which the application was approved an equal number of times within the 12-month period beginning on the date of the approval by the Commission of the application.

(e) APPLICATION OF REQUIREMENT- Subsection (a) does not apply to a distributor, a retailer of cigarettes who does not manufacture, package, or import cigarettes for sale or distribution within the United States.

(f) TELEVISION AND RADIO ADVERTISING- It shall be unlawful to advertise cigarettes and little cigars on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

SEC. 112. SMOKELESS TOBACCO WARNINGS.

(a) IN GENERAL-

(1) PACKAGING- It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any smokeless tobacco product the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

WARNING: This Product May Cause Mouth Cancer.

WARNING: This Product May Cause Gum Disease And Tooth Loss.

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

WARNING: Smokeless Tobacco Is Addictive.

(2) ADVERTISING- It shall be unlawful for any manufacturer or importer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless the advertising bears, in accordance with the requirements of this section, one of the following labels:

WARNING: This Product May Cause Mouth Cancer.

WARNING: This Product May Cause Gum Disease And Tooth Loss.

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

WARNING: Smokeless Tobacco Is Addictive.

(b) REQUIREMENTS FOR LABELING-

(1) LOCATION- Each label statement required by paragraph (1) of subsection (a) shall be located on the principal display panel of the product and occupy not less than 25 percent of such panel.

(2) TYPE AND COLOR- With respect to each label statement required by paragraph (1) of subsection (a), the phrase 'WARNING' shall appear in capital letters and the label statement shall be printed in 17 point type with adjustments as determined appropriate by the Commissioner to reflect the length of the required statement. All the letters in the label shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the package and be printed in an alternating black on white and white on black format as determined appropriate by the Commissioner.

(c) ADVERTISING AND ROTATION- The provisions of subsections (c) and (d)(1) of section 111 shall apply to advertisements for smokeless tobacco products and the rotation of the label statements required under subsection (a)(1) on such products.

(d) APPLICATION OF REQUIREMENT- Subsection (a) does not apply to a distributor or a retailer of smokeless tobacco products who does not manufacture, package, or import such products for sale or distribution within the United States.

(e) TELEVISION AND RADIO ADVERTISING- It shall be unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

SEC. 113. INGREDIENTS.

Each person who manufactures, packages, or imports cigarettes or smokeless tobacco products shall annually provide the Secretary with the information required under section 910 of the Federal Food, Drug, and Cosmetic Act (as added by section 143(3) of this Act).

SEC. 114. ENFORCEMENT, REGULATIONS, AND CONSTRUCTION.

(a) ENFORCEMENT-

(1) **IN GENERAL-** A violation of section 111 or 112 or the regulations promulgated pursuant to this subtitle shall be considered a violation of section 5 of the Federal Trade Commission Act.

(2) **FINES-** Any person who is found to violate any provision of sections 111, 112, or 113(a) shall be guilty of a misdemeanor and shall, on conviction thereof, be subject to a fine of not more than \$10,000.

(b) **INJUNCTIONS-** The several district courts of the United States are vested with jurisdiction, for cause shown, to prevent and restrain violations of this subtitle upon the application of the Federal Trade Commission in the case of a violation of section 111 or 112 or upon application of the Attorney General of the United States acting through the several United States attorneys in their several districts in the case of a violation of section 113.

(c) **REGULATIONS-** Not later than 180 days after the date of the enactment of this Act, the Federal Trade Commission shall promulgate such regulations as it may require to implement sections 111 and 112.

(d) **CONSTRUCTION-** Nothing in this subtitle (other than the requirements of sections 111, 112, and 113) shall be construed to limit, restrict, or expand the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco products.

SEC. 115. PREEMPTION.

(a) **FEDERAL ACTION-** No statement relating to the use of cigarettes or smokeless tobacco products and health, other than the statements required by sections 111 or 112, shall be required by any Federal agency to appear on any package or in any advertisement of cigarettes or a smokeless tobacco product.

(b) **STATE AND LOCAL ACTION-** No statement relating to the use of cigarettes or smokeless tobacco products and health, other than the statements required by sections 111 and 112, shall be required by any State or local statute or regulation to be included on any package or in any advertisement of cigarettes or a smokeless tobacco product.

(c) **EFFECT ON LIABILITY LAW-** Except as otherwise provided in this Act, nothing in this subtitle shall relieve any person from liability at common law or under State statutory law to any other person.

SEC. 116. REPORTS.

(a) **SECRETARY'S REPORT-** Not later than 6 months after the date of enactment of this Act,

and biennially thereafter, the Secretary shall prepare and submit to Congress a report containing--

- (1) a description of the effects of health education efforts on the use of cigarettes and smokeless tobacco products;
- (2) a description of the use by the public of cigarettes and smokeless tobacco products;
- (3) an evaluation of the health effects of cigarettes and smokeless tobacco products and the identification of areas appropriate for further research; and
- (4) such recommendations for legislation and administrative action as the Secretary considers appropriate.

(b) **FTC REPORT**- Not later than 6 months after the date of enactment of this Act, and biennially thereafter, the Federal Trade Commission shall prepare and submit to Congress a report containing--

- (1) a description of the current sales, advertising, and marketing practices associated with cigarettes and smokeless tobacco products; and
- (2) such recommendations for legislation and administrative action as the Commission deems appropriate.

SEC. 117. EXPORTS.

Packages of cigarettes or smokeless tobacco products manufactured, imported, or packaged--

- (1) for export from the United States; or
- (2) for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States;

shall be exempt from the requirements of this subtitle, but such exemptions shall not apply to cigarettes or smokeless tobacco products manufactured, imported, or packaged for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States.

SEC. 118. REPEALS.

The following Acts are repealed:

- (1) The Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331 et seq.).
- (2) The Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 et seq.).

Subtitle C--Restriction on Access to Tobacco Products

SEC. 121. REQUIREMENTS RELATING TO RETAILERS.

(a) **SALES TO MINORS PROHIBITED**- No retailer may distribute a tobacco product to any individual who is under 18 years of age.

(b) PHOTO IDENTIFICATION-

(1) REQUIREMENT- Except as provided in paragraph (2), each retailer shall verify, by means of

photographic identification containing the date of birth of the bearer, that no individual purchasing a tobacco product is under 18 years of age.

(2) EXCEPTION- No verification under paragraph (1) is required for any individual who is at least 27 years of age.

(3) LOCATION OF PRODUCTS- Except as provided in section 122(d), a retailer shall ensure that all tobacco products are located in areas where customers do not have access to the products.

(c) FACE-TO-FACE TRANSACTIONS- Except as provided in section 122(c)(1), a retailer may sell tobacco products only in a direct, face-to-face exchange without the assistance of any electronic or mechanical device.

(d) OUT-OF-PACKAGE DISTRIBUTION- No retailer may break or otherwise open a tobacco product to sell or distribute to individuals portions of such product (including individual cigarettes or a number of cigarettes that is smaller than the quantity in the minimum package size, or any quantity of cigarette tobacco or smokeless tobacco that is smaller than the smallest package distributed by the retailer for individual consumer use).

(e) RETAILER COMPLIANCE WITH RESPECT TO SELF-SERVICE- Each retailer shall ensure that all tobacco-related self-service displays, advertising, labeling, and other items that are located in the establishment of the retailer and that do not comply with the requirements of this title are removed or are brought into compliance with the requirements of this title.

SEC. 122. MANUFACTURE, SALE, AND DISTRIBUTION.

(a) MINIMUM CIGARETTE PACKAGE SIZE- Except as otherwise provided in this section, no manufacturer, distributor, or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than 20 cigarettes.

(b) PROHIBITION ON SAMPLING- No manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of any tobacco product.

(c) PROHIBITION ON DISTRIBUTION THROUGH SELF-SERVICE MODES OF SALE-

(1) VENDING MACHINES- No manufacturer, distributor, or retailer may distribute or cause to be distributed any tobacco product through a vending machine.

(2) OTHER DISPLAYS- Except as provided in subsection (d)(1)(B), no manufacturer, distributor, or retailer may distribute or cause to be distributed any tobacco product through a self-service display.

(d) PERMITTED SELF-SERVICE MODES OF SALE-

(1) IN GENERAL- Notwithstanding this subtitle, the following methods of distributing tobacco products are permitted:

(A) Mail-order sales as provided for in paragraph (2), except that mail-order redemption of coupons and the distribution of free samples through the mail shall be prohibited.

(B) Self-service displays that are located in facilities where the retailer ensures that no individuals under 18 years of age are present or permitted to enter at any time.

(2) MAIL-ORDER SALES-

(A) IN GENERAL- A manufacturer, distributor, or retailer may distribute or cause to be distributed a tobacco product through mail-order sales only if such sales are subject to a procedure for verifying that no individual purchasing such products is under 18 years of age.

(B) REVIEW BY COMMISSIONER- Not later than 2 years after the date of enactment of this Act, the Commissioner shall review the verification procedures implemented under subparagraph (A) to determine whether individuals under 18 years of age are obtaining tobacco products through the mail. If the Commissioner determines that a significant number of underage individuals are obtaining such products through the mail, the Commissioner may promulgate regulations to ban the distribution of tobacco products through the mail.

Subtitle D--Licensing of Retail Tobacco Sellers

SEC. 131. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL- The Commissioner, after consultation with the Secretary, shall establish a program under which an entity would be required to obtain a State or local license to sell or otherwise distribute tobacco products directly to consumers.

(b) PROHIBITION ON DISTRIBUTION- No entity shall sell or otherwise distribute tobacco products directly to consumers unless such entity has in effect a tobacco license issued or renewed in accordance with the laws of the State in which the products are to be sold or otherwise distributed.

(c) ELIGIBILITY OF STATE FOR PAYMENTS- To be eligible to receive a block grant under section 502, a State shall have in effect laws that meet the standards described in this subtitle that provide for the licensing of entities engaged in the sale or distribution of tobacco products

directly to consumers and shall enforce such laws in accordance with section 133.

SEC. 132. REQUIREMENTS.

(a) LICENSURE AND NOTICE-

(1) IN GENERAL- The State shall require that each person engaged in the sale or distribution of tobacco products directly to consumers obtain a license that is issued by the State. A separate license shall be required for each place of business where tobacco products are distributed or sold at retail.

(2) NOTICE- The State shall notify every person in the State who is engaged in the

distribution at retail of tobacco products of the license requirement of this section and of the date by which such person shall have obtained a license in order to distribute such products.

(b) FEE- The State may assess an annual licensing fee with respect to each entity that desires to obtain a license under subsection (a). Amounts derived from such fees shall be used to offset the administrative costs incurred by the State in issuing and renewing licenses under this subtitle.

(c) APPLICATION-

(1) IN GENERAL- An entity shall prepare and submit to the State an application for a license (including the renewal of a license) under this section, on such form as the State may require, that shall set forth the name under which the applicant transacts or intends to transact business, the location of the place of business for which the license is to be issued, the street address to which all notices relevant to the license are to be sent (in this Act referred to as 'notice address'), and any other identifying information that the State may require.

(2) ACTION BY STATE-

(A) IN GENERAL- The State shall issue or renew a license or deny an application for a license or the renewal of a license within 30 days of receiving a properly completed application and the licensing fee. The State shall provide notice to an applicant of an action on an application denying the issuance of a license or refusing to renew a license.

(B) FINDING BY STATE- The State shall deny the issuance or renewal of a license upon an application if the State determines that the applicant has failed to comply with the requirements of this title.

(3) SCOPE AND RENEWAL- Every license issued by the State shall be valid for a period determined by the State and shall be renewed upon application except as otherwise provided in this section.

SEC. 133. PENALTIES, REVOCATIONS AND SUSPENSIONS.

(a) PENALTIES-

(1) CRIMINAL PENALTIES APPLICABLE TO UNLICENSED SELLERS- Any individual who sells or otherwise distributes tobacco products to a consumer without a tobacco license in effect as provided for in this subtitle shall be subject, under the applicable State law, to a fine of not less than \$1,000, or imprisonment of not less than 6 months, or both. With respect to any corporate employer of such an individual, the corporation shall be subject to a fine of not more than \$50,000.

(2) CIVIL PENALTIES APPLICABLE TO SELLERS IN VIOLATION OF LICENSE-

(A) IN GENERAL- In addition to any criminal penalties that may be imposed under paragraph (1), a State may, in accordance with subsection (b), impose civil penalties on any entity that has sold or distributed tobacco products in the State in violation of the State tobacco licensing laws.

(B) LIMITATIONS- The civil penalties that may be imposed under subparagraph

(A) shall not exceed the following:

- (i) For the first offense within any 2-year period, \$500, or a 3-day suspension of the tobacco license, or both.
- (ii) For a second offense within any 2-year period, \$1,000, or a 7-day suspension of the tobacco license, or both.
- (iii) For a third offense within any 2-year period, \$2,000, or a 30-day suspension of the tobacco license, or both.
- (iv) For a fourth offense within any 2-year period, \$5,000, or a 6-month suspension of the tobacco license, or both.
- (v) For a fifth offense within any 2-year period, \$10,000, or a 1-year suspension of the tobacco license, or both.
- (vi) For a sixth and any subsequent offense within any 2-year period, \$25,000, or a 3-year revocation of the tobacco license.
- (vii) For a tenth offense within any 2-year period, the permanent revocation of the tobacco license.

(b) REVOCATION AND SUSPENSIONS-

(1) NOTICE- Upon a finding that a tobacco licensee has been determined by a court of competent jurisdiction to have violated a provision of State law under this subtitle during the license term, the State shall notify the licensee in writing, served personally or by registered mail at the principal place of business of the licensee, that any subsequent violation of such law at the same place of business may result in an administrative action to suspend the license for a period determined by the State in accordance with subsection (a)(2)(B).

(2) SUSPENSION- Upon finding that a further violation by the tobacco licensee has occurred involving the same place of business for which the license was issued and the licensee has been provided notice under paragraph (1), the State may initiate an administrative action to suspend the license for a period to be determined in accordance with subsection (a)(2)(B). If an administrative action to suspend a license is initiated, the State shall immediately notify the licensee, in writing at the principal place of business of the licensee, of the initiation of the action and the reasons therefore and permit the licensee an opportunity, at least 30 days after written notice is served personally or by registered mail upon the licensee, to show why suspension of the license would be unwarranted or unjust.

(3) REVOCATION- The State may initiate an administrative action to revoke a tobacco license that previously has been suspended under paragraph (2) if, during the 2-year period described in subsection (a)(2)(B), a further violation of this subtitle is committed after the suspension by the licensee involving the same place of business for which the license was issued. If an administrative action to revoke a license is initiated, the State shall immediately notify the licensee, in writing at the principal place of business of the licensee, of the initiation of the action and the reasons therefore and permit the licensee an opportunity, at least 30 days after written notice is served personally or by registered mail upon the licensee, to show why revocation of the license would be unwarranted or unjust.

(c) JUDICIAL REVIEW- A tobacco licensee may seek judicial review of an action of the State suspending, revoking, denying, or refusing to renew a license under this section by filing a complaint in a court of competent jurisdiction. A complaint shall be filed within 30 days after the date on which notice of the action involved is received by the licensee. The court shall review the evidence de novo.

SEC. 134. FEDERAL LICENSING OF MILITARY AND OTHER ENTITIES.

(a) IN GENERAL- The Commissioner, in consultation with the Secretary of Defense, Secretary of State, and other appropriate Federal officials, shall establish and implement a Federal tobacco licensing program to be applied to entities that sell or distribute tobacco products--

(1) on any military installation (as defined in section 2801(c)(2) of title X, United States Code);

(2) in any United States embassy;

(3) in any facility owned and operated by the Federal Government either in the United States or in a foreign country;

(4) in any duty-free shop located within the United States; or

(5) through any other Federal entity or on any other Federal property as determined appropriate by the Commissioner.

(b) REQUIREMENTS OF PROGRAM- The program established under subsection (a) shall apply requirements (including those for penalties, suspensions, and revocations) similar to those required to be implemented by States under this subtitle.

(c) INDIAN TRIBES AND TRIBAL LANDS- For purposes of applying and enforcing the provisions of this subtitle to entities that sell or otherwise distribute tobacco products on Indian reservations (as defined in section 403(9) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(9))), an Indian tribe or tribal organization (as such terms are defined in section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b)) shall be treated as a State.

Subtitle E--Regulation of Tobacco Product Development and Manufacturing

SEC. 141. REFERENCE.

Whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

SEC. 142. TREATMENT OF TOBACCO PRODUCTS AS DRUGS.

(a) DEFINITIONS-

(1) DRUG-

(A) IN GENERAL- Section 201(g)(1) (21 U.S.C. 321(g)(1)) is amended by

inserting

before the first period `; and (E) tobacco products'.

(B) EXCEPTION- Section 201(p) of such Act is amended in paragraphs (1) and (2) by striking `(except a new animal drug' and inserting `(except a tobacco product, a new animal drug,'.

(2) DEVICES- Section 201(h) (21 U.S.C. 321(h)) is amended by adding at the end the following: `Such term includes a tobacco product which shall be classified as a class II device.'.

(3) OTHER DEFINITIONS- Section 201 (21 U.S.C. 321) is amended by adding at the end thereof the following new paragraphs:

`(ii) TOBACCO ADDITIVE- The term `tobacco additive' means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in the substance becoming a component of, or otherwise affecting the characteristics of, any tobacco product, including any substance that may have been removed from the tobacco product and then readded in the substance's original or modified form.

`(jj) TAR- The term `tar' means mainstream total articulate matter minus nicotine and water.

`(kk) TOBACCO PRODUCT- The term `tobacco product' has the meaning given such term in section 100(22) of the Universal Tobacco Settlement Act.'.

(b) ENFORCEMENT- Section 301 (21 U.S.C. 331) is amended by adding at the end thereof the following new subsection:

`(x) The manufacture, labeling, distribution, and sale of any adulterated or misbranded tobacco product in violation of--

`(1) regulations issued pursuant to section 903;

`(2) title I of the Universal Tobacco Settlement Act.'.

(c) ADULTERATED OR MISBRANDED PROVISIONS-

(1) ADULTERATION- Section 501 (21 U.S.C. 351) is amended by adding at the end the following:

`(j) If it is a tobacco product and it does not comply with the provisions of chapter IX.'.

(2) MISBRANDING- Section 502 (21 U.S.C. 352) is amended by adding at the end the following:

`(u) If it is a tobacco product and its labeling does not comply with the provisions of chapter IX and the provisions of title I of the Universal Tobacco Settlement Act.'.

(d) CLASSIFICATION OF TOBACCO PRODUCTS- Section 512(a)(1)(B) (21 U.S.C. 360c(a)(1)(B)) is amended by adding at the end the following: `For purposes of this Act, a tobacco product shall be classified as a class II device with performance standards applicable under chapter IX.'.

SEC. 143. HEALTH AND SAFETY REGULATION OF TOBACCO PRODUCTS.

The Act (21 U.S.C. 301 et seq.) is amended--

- (1) by redesignating chapter IX as chapter X;
- (2) by redesignating sections 901, 902, 903, 904, and 905 as sections 1001, 1002, 1003, 1004, and 1005, respectively; and
- (3) by adding after chapter VIII the following new chapter:

`CHAPTER IX--TOBACCO PRODUCTS

`SEC. 901. DEFINITIONS.

`For purposes of this chapter and in addition to the definitions contained in section 201, the definitions under section 100 of the Universal Tobacco Settlement Act shall apply.

`SEC. 902. PURPOSE.

`It is the purpose of this chapter to impose a regulatory scheme applicable to the development and manufacturing of cigarettes and smokeless tobacco products/tobacco products. Such scheme shall include the approval of the ingredients used in such products and the imposition of standards to reduce the level of certain constituents contained in such products, including nicotine.

`SEC. 903. PROMULGATION OF REGULATIONS.

`The Commissioner shall promulgate regulations governing the misbranding, adulteration, and dispensing of tobacco products that are consistent with this chapter and with the manner in which other products that are ingested into the body are regulated under this Act, except that the Commissioner may not promulgate a regulation that prohibits the sale and distribution of a tobacco product solely on the basis of the fact that tobacco causes disease. Such regulations shall be promulgated not later than 6 months after the date of enactment of the Universal Tobacco Settlement Act.

`SEC. 904. MINIMUM REQUIREMENTS.

`(a) MISBRANDING- The regulations promulgated under section 903 shall at a minimum require that a tobacco product be deemed to be misbranded if the labeling of the package of such product is not in compliance with the provisions of this chapter, of other applicable provisions of this Act, or of sections 102(a), 103, 111, 112, and 113 (as applicable to the type of product involved) of the Universal Tobacco Settlement Act.

`(b) ADULTERATION- The regulations promulgated under section 903 shall at a minimum require that a

tobacco product be deemed to be adulterated if the Commissioner determines that any tobacco additive in such product, regardless of the amount of such tobacco additive, either by itself or in conjunction with any other tobacco additive or ingredient significantly increases the risk to human health or the risk of addiction to such product.

SEC. 905. PERFORMANCE STANDARDS FOR TOBACCO PRODUCTS.

(a) IN GENERAL- With respect to tobacco products, the special controls required by section 513(a)(1)(B) shall include performance standards for such products as established in accordance with this section.

(b) REQUIREMENTS- A performance standard established under this section for a tobacco product--

(1) shall include provisions to require the modification of the product to minimize the illness or injury that may result in consumers as a result of the use of such products, including the components of such products that produce dependence among such consumers; and

(2) include, where appropriate--

(A) provisions with respect to the construction, components, ingredients, and properties of the tobacco product;

(B) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product or, if it is determined that no other more practicable means are available to the Secretary to assure the conformity of the device to the standard, provisions for the testing (on a sample basis or, if necessary, on an individual basis) by the Secretary or by another person at the direction of the Secretary;

(C) provisions for the measurement of the performance characteristics of the tobacco product;

(D) provisions requiring that the results of each or of certain of the tests of the device required to be made under subparagraph (B) demonstrate that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

(E) a provision requiring that the sale and distribution of the device be restricted but only to the extent that the sale and distribution of a device may be otherwise restricted under this Act of title I of the Universal Tobacco Settlement Act.

(c) EVALUATION- The Secretary shall provide for the periodic evaluation of a performance standard established under this section to determine if such standards should be changed to reflect new medical, scientific, or other technological data.

(d) PROCEDURES- In carrying out this section, the Secretary shall, to the maximum extent practicable--

(1) use personnel, facilities, and other technical support available in other Federal agencies;

(2) consult with the Scientific Advisory Committee established under section 906 and other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

(3) invite appropriate participation, through joint or other conferences, workshops, or

other means, by informed persons representative of scientific, professional, industry, or consumer organizations who in the judgment of the Secretary can make a significant contribution.

`(e) PROCEDURES-

`(1) IN GENERAL- The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard under this section.

`(2) NOTICE REQUIREMENTS- A notice of proposed rulemaking for the establishment or amendment of a performance standard under this section shall--

`(A) set forth a finding with supporting justification that the performance standard is appropriate under subsection (b)(1) with respect to the product; and

`(B) invite interested persons to submit an existing performance standard for the product, including a draft or proposed performance standard, for consideration by the Secretary.

`(3) COMMENT PERIOD- The Secretary shall provide for a comment period of not less than 60 days.

`(4) APPLICABILITY OF SECTION 514- The provisions of paragraphs (3) and (4) of section 514(b) shall apply to the establishment, amendment, or revocation of any performance standard under this section, except that any reference to an advisory committee shall be deemed to be a reference to the Scientific Advisory Committee established under section 906.

`(f) NICOTINE- Except as provided in section 907, a performance standard established under this section may not require the elimination of nicotine from tobacco products.

`(g) LIMITATION- The Commissioner may not establish a performance standard under this section that has the effect of prohibiting the sale and distribution, to individuals who are at least 18 years of age, of traditional tobacco products in the basic form of the particular product as described in the definition of the particular product under section 100 of the Universal Tobacco Settlement Act.

`SEC. 906. SCIENTIFIC ADVISORY COMMITTEE.

`(a) ESTABLISHMENT- Not later than 1 year after the date of enactment of the Universal Tobacco Settlement Act, the Secretary shall establish an advisory committee, to be known as the 'Scientific Advisory Committee', to assist the Secretary in establishing, amending, or revoking a performance standard under section 905.

`(b) MEMBERSHIP- The Secretary shall appoint as members of the Scientific Advisory Committee any individuals with expertise in the medical, scientific, or other technological data involving the manufacture and use of tobacco products, and of appropriately diversified professional backgrounds. The Secretary may not appoint to the Committee any individual who is in the regular full-time employ of the Federal Government. The Secretary shall designate one of the members of each advisory committee to serve as chairperson of the Committee. The Committee shall include as nonvoting members a representative of consumer interests and a representative of interests of the device manufacturing industry.

`(c) COMPENSATION AND EXPENSES-

`(1) COMPENSATION- Members of the Scientific Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the Committee or otherwise serving at the request of the Secretary, shall be entitled to receive compensation at rates to be fixed by the Secretary, which rates may not exceed the daily equivalent of the rate of pay for level 4 of the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including traveltime) they are so engaged.

`(2) EXPENSES- While conducting the business of the Scientific Advisory Committee away from their homes or regular places of business, each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

`(d) DUTIES- The Scientific Advisory Committee shall--

`(1) assist the Secretary in establishing, amending, or revoking performance standards under section 905;

`(2) examine and determine the effects of the alteration of the nicotine yield levels in tobacco products;

`(3) examine and determine whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved, and, if so, determine what that level is; and

`(4) review other safety, dependence or health issues relating to tobacco products as determined appropriate by the Secretary.

`SEC. 907. REQUIREMENTS RELATING TO NICOTINE AND OTHER CONSTITUENTS.

`(a) GENERAL RULE- Except as provided in subsection (d), the Secretary, based on a finding under subsection (b), may adopt a performance standard under section 905 that requires the modification of a tobacco product in a manner that involves--

`(1) the gradual reduction of nicotine yields of the product; or

`(2) the reduction or elimination of other constituents or harmful components of the product.

`(b) REQUIRED FINDING-

`(1) IN GENERAL- A modification described in subsection (a) shall not be adopted unless the Secretary determines that the modification--

`(A) will result in a significant reduction in the health risks associated with the use of the tobacco product involved;

`(B) is technologically feasible; and

`(C) will not result in the creation of a significant demand for contraband products or other tobacco products that do not meet the performance standard that requires the modification.

`(2) CONTRABAND PRODUCTS- For purposes of paragraph (1)(C), the Secretary, in determining whether a significant demand for contraband products will be created, shall take into account--

`(A) the estimated number of dependent tobacco product users residing in the United States on the date on which the proposed modification is being considered;

`(B) the availability to such users, or lack thereof, of alternative products; and

`(C) any other factors determined appropriate by the Secretary.

`(3) SUBSTANTIAL EVIDENCE- A determination under paragraph (2) shall be based upon substantial evidence as demonstrated through an administrative record developed through formal rulemaking procedures as required under title 5, United States Code. Any such determination, and any determination by the Secretary with respect to a petition filed for an administrative review of the modification, shall be subject to judicial review in the United States District Court for the District of Columbia.

`(c) LIMITATION- Effective on the date that is 3 years after the date of enactment of the Universal Tobacco Settlement Act, and notwithstanding any performance standard established under this chapter, no cigarette or tobacco product shall be sold or otherwise distributed in the United States that exceeds a 12 milligram tar yield, as determined using the testing methodology used by the Federal Trade Commission on such date of enactment.

`(d) 12-YEAR PROHIBITION- During the 12-year period beginning on the date of enactment of the Universal Tobacco Settlement Act, the Secretary shall not adopt any performance standard under section 905 that requires the complete elimination of nicotine yields in a tobacco product.

`(e) ACTION AFTER PROHIBITION-

`(1) IN GENERAL- After the expiration of the 12-year period referred to in subsection (d), the Secretary may establish or amend any performance standard to completely eliminate nicotine yields in a tobacco product.

`(2) DETERMINATION- Any performance standard described in paragraph (1) shall not be adopted unless the Secretary determines that the standard--

`(A) will result in a significant overall reduction in the health risks associated with the use of the tobacco product involved by consumers, including individuals who continue to use tobacco products but use such products less often and individuals who stop using such products;

`(B) is technologically feasible; and

`(C) will not result in the creation of a significant demand for contraband products or other tobacco products that do not meet the performance standard.

`(3) HEALTH BENEFITS- In making a determination with respect to health risks under

paragraph (2)(A), the Secretary shall consider--

- `(A) the number of dependent tobacco users residing in the United States on the date on which the proposed performance standard is being considered;
- `(B) the availability and demonstrated market acceptance of alternative products;
- `(C) the effectiveness of tobacco product cessation techniques and devices on the market on the date on which the proposed performance standard is being considered; and
- `(D) any other factors determined appropriate by the Secretary.

`(4) PREPONDERANCE OF THE EVIDENCE- A determination under paragraph (2) with respect to the elimination of nicotine, or an action that would have an effect comparable to the elimination of nicotine, shall be based upon a preponderance of the evidence as demonstrated, upon the request of a manufacturer, through a Part 12 hearing or notice and comment rulemaking as required under title 5, United States Code. Any such determination, and any determination by the Secretary with respect to a petition filed for an administrative review of the modification, shall be subject to judicial review in the United States District Court for the District of Columbia.

`(5) PHASE-IN- A performance standard described in paragraph (1) shall be implemented during a 2-year phase-in period beginning on the date on which all administrative or judicial action provided for under this chapter with respect to the standard is completed.

`(f) TOBACCO CONSTITUENTS- The Secretary shall promulgate regulations for the testing, reporting and disclosure of tobacco smoke constituents that the Secretary determines the public should be informed of to protect public health, including tar, nicotine, and carbon monoxide. Such regulations may require label and advertising disclosures relating to tar and nicotine.

`SEC. 908. REDUCED RISK PRODUCTS.

`(a) MISBRANDING- Except as provided in subsection (b), the regulations promulgated in accordance with section 904(a) shall require that a tobacco product be deemed to be misbranded if the labeling of the package of the product, or the claims of the manufacturer in connection with the product, can reasonably be interpreted by an objective consumer as stating or implying that the

product presents a reduced health risk as compared to other similar products.

`(b) EXCEPTION-

`(1) IN GENERAL- Subsection (a) shall not apply to the labeling of a tobacco product, or the claims of the manufacturer in connection with the product, if--

- `(A) the manufacturer, based on scientific evidence, demonstrates to the Commissioner that the product significantly reduces the risk to the health of the user as compared to other similar tobacco products; and
- `(B) the Commissioner approves the specific claim that will be made a part of the labeling of the product, or the specific claims of the manufacturer in connection with the product.

`(2) REDUCTION IN HARM- The Commissioner shall promulgate regulations to permit the inclusion of scientifically-based specific health claims on the labeling of a tobacco product package, or the making of such claims by the manufacturer in connection with the product, where the Commissioner determines that the inclusion or making of such claims would reduce harm to consumers and otherwise promote public health.

`(c) DEVELOPMENT OF REDUCED RISK PRODUCT TECHNOLOGY-

`(1) NOTIFICATION OF COMMISSIONER- The manufacturer of a tobacco product shall provide written notice to the Commissioner upon the development or acquisition by the manufacturer of any technology that would reduce the risk of such products to the health of the user.

`(2) CONFIDENTIALITY- The Commissioner shall promulgate regulations to provide a manufacturer with appropriate confidentiality protections with respect to technology that is the subject of a notification under paragraph (1) that contains evidence that the technology involved is in the early developmental stages.

`(3) LICENSING-

`(A) IN GENERAL- With respect to any technology developed or acquired under paragraph (1), the manufacturer shall permit the use of such technology by other manufacturers of tobacco products to which this chapter applies.

`(B) FEES- The Commissioner shall promulgate regulations to provide for the payment of a commercially reasonable fee by each manufacturer that uses the technology described under subparagraph (A) to the manufacturer that submits the notice under paragraph (1) for such technology. Such regulations shall contain procedures for the resolution of fee disputes between manufacturers under this subparagraph.

`(d) REQUIREMENT OF MANUFACTURE AND MARKETING-

`(1) PURPOSE- It is the purpose of this subsection to provide for a mechanism to ensure that tobacco products that are designed to be less hazardous to the health of users are developed, tested, and made available to consumers.

`(2) DETERMINATION- Upon a determination by the Commissioner that the manufacture of a tobacco product that is less hazardous to the health of users is technologically feasible, the Commissioner may, in accordance with this subsection, require that certain manufacturers of such products manufacture and market such less hazardous products.

`(3) MANUFACTURER-

`(A) REQUIREMENT- Except as provided in subparagraph (B), the requirement under paragraph (2) shall apply to any manufacturer that provides a notification to the Commissioner under subsection (c)(1) concerning the technology that is the subject of the determination of the Commissioner.

`(B) EXCEPTION- The requirement under subparagraph (A) shall not apply to a manufacturer if--

`(i) the manufacturer elects not to manufacture such products and provides notice to the Commissioner of such election; and

`(ii) the manufacturer agrees to provide the technology involved, for a commercially reasonable fee, to other manufacturers that enter into agreements to use such technology to manufacture and market tobacco products that are less hazardous to the health of users.

`(4) ACTION BY PUBLIC HEALTH SERVICE- If no manufacturer elects or agrees to manufacture and market tobacco products that are less hazardous to the health of users through the use of technology available pursuant to this subsection within a reasonable period of time, as determined appropriate by the Commissioner, the Commissioner, in consultation with the Secretary and acting through the Public

Health Service, shall, either directly or through grants or contracts, provide for the manufacture and marketing of such products.

`SEC. 909. GOOD MANUFACTURING PRACTICE STANDARDS.

`(a) AUTHORITY-

`(1) IN GENERAL- The Secretary may, in accordance with paragraph (2), prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, as prescribed in such regulations, to ensure that such products will be in compliance with this chapter.

`(2) REQUIREMENTS PRIOR TO REGULATIONS- Prior to the Secretary promulgating any regulation under paragraph (1) the Secretary shall--

`(A) afford the Scientific Advisory Committee established under section 906 an opportunity (with a reasonable time period) to submit recommendations with respect to the regulations proposed to be promulgated; and

`(B) afford opportunity for an oral hearing.

`(b) MINIMUM REQUIREMENTS- The regulations promulgated under subsection (a) shall at a minimum require--

`(1) the implementation of a quality control system by the manufacturer of a tobacco product;

`(2) a process for the inspection of tobacco product material prior to the packaging of such product to be determined by the Commissioner;

`(3) procedures for the proper handling and storage of the packaged tobacco product;

`(4) after consultation with the Administrator of the Environmental Protection Agency, the development and adherence to applicable tolerances with respect to pesticide chemical residues in or on commodities used by the manufacturer in the manufacture of the finished tobacco product;

`(5) the inspection of facilities by officials of the Food and Drug Administration as otherwise provided for in this Act; and

`(6) record keeping and the reporting of certain information.

`(c) PETITIONS FOR EXEMPTIONS AND VARIANCES-

`(1) IN GENERAL- Any person subject to any requirement prescribed by regulations under subsection (a) may petition the Secretary for an exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall--

`(A) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to ensure that the device is in compliance with this chapter;

`(B) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the product in lieu of the methods, facilities, and controls prescribed by the requirement; and

`(C) contain such other information as the Secretary shall prescribe.

`(2) SCIENTIFIC ADVISORY COMMITTEE- The Secretary may refer to the Scientific Advisory Committee established under section 906 any petition submitted under paragraph (1). The Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days of the date of the petition's referral. Within 60 days after--

`(A) the date the petition was submitted to the Secretary under paragraph (1); or

`(B) if the petition was referred to the Scientific Advisory Committee, the expiration of the 60-day period beginning on the date the petition was referred to such Committee;

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

`(3) APPROVAL OF PETITION-

`(A) IN GENERAL- The Secretary may approve--

`(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the product will comply with this chapter; and

`(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to

be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to ensure that the product will comply with this chapter.

`(B) CONDITIONS- An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to ensure that the product will comply with this chapter.

`(4) INFORMAL HEARING- After the issuance of an order under paragraph (2) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

`(d) AGRICULTURAL PRODUCERS- The Secretary may not promulgate any regulation under this section that has the effect of placing regulatory burdens on tobacco producers (as such term is used for purposes of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) and the Agricultural Act of 1949 (7 U.S.C. 1441 et seq.)) in excess of the regulatory burdens generally placed on other agricultural commodity producers.

`SEC. 910. DISCLOSURE AND REPORTING OF NONTOBACCO INGREDIENTS.

`(a) ANNUAL SUBMISSION-

`(1) IN GENERAL- Each manufacturer of a tobacco product shall annually provide the Secretary with--

`(A) a list of all ingredients, substances, and compounds (other than tobacco, water or reconstituted tobacco sheet made wholly from tobacco) that are added to the tobacco (and the paper or filter of the product if applicable) in the manufacture of the tobacco product, for each brand of tobacco product so manufactured; and

`(B) a description of the quantity of the ingredients, substances, and compounds that are listed under subparagraph (A) with respect to each brand of tobacco product.

`(2) GENERAL DISCLOSURE OF SAFETY- With respect to each annual submission under paragraph (1) during the 5-year period beginning on the date of enactment of the Universal Tobacco Settlement Act, the manufacturer shall, for each ingredient, substance, or compound contained on the list of the manufacturer for the year involved, disclose whether the manufacturer has determined that the ingredient, substance, or compound would be exempt from public disclosure under this section.

`(b) SAFETY ASSESSMENTS-

`(1) REQUIREMENT- Not later than 5 years after the date of enactment of the Universal Tobacco Settlement Act, and annually thereafter, each manufacturer shall submit to the Secretary a safety assessment for each ingredient, substance, or compound that is listed under subsection (a)(1)(A) with respect to each brand of tobacco product manufactured by each such manufacturer.

`(2) BASIS OF ASSESSMENT- The safety assessment of an ingredient, substance, or compound described in paragraph (1) shall--

`(A) be based on the best scientific evidence available at the time of the submission of the assessment; and

`(B) result in a finding that there is a reasonable certainty in the minds of competent scientists that the ingredient, substance, or compound is not harmful in the quantities used under the intended conditions of use.

`(c) PROHIBITION-

`(1) REGULATIONS- Not later than 12 months after the date of enactment of the Universal Tobacco Settlement Act, the Secretary shall promulgate regulations to prohibit the use of any ingredient, substance, or compound in the tobacco product of a manufacturer--

`(A) if no safety assessment has been submitted by the manufacturer for the ingredient, substance, or compound; or

`(B) if the Secretary disapproves of the safety of the ingredient, substance, or compound that was the subject of the assessment under paragraph (2).

`(2) REVIEW OF ASSESSMENTS-

`(A) GENERAL REVIEW- Not later than 90 days after the receipt of a safety assessment under subsection (b), the Secretary shall review the findings contained in such assessment.

`(B) APPROVAL OR DISAPPROVAL- Not later than 90 days after the completion of a review under subparagraph (A), the Secretary shall approve or disapprove of the safety of the

ingredient, substance, or compound that was the subject of the assessment and provide notice to the manufacturer of such action.

`(C) INACTION BY SECRETARY- If the Secretary fails to act with respect to an assessment during the 90-day period referred to in subparagraph (B), the safety of the ingredient, substance, or compound involved shall be deemed to be approved.

`(d) DISCLOSURE OF INGREDIENTS TO THE PUBLIC-

`(1) INITIAL DISCLOSURE- The regulations promulgated in accordance with section 904(a) shall, at a minimum, require that, during the 5-year period beginning on the date that is 6 months after the date of enactment of the Universal Tobacco Settlement Act, a tobacco product be deemed to be misbranded if the labeling of the package of such product does not disclose the ingredients of the product in accordance with the labeling provisions applicable to food ingredients under this Act.

`(2) DISCLOSURE OF ALL INGREDIENTS- The regulations referred to in paragraph (1) shall, at a minimum, require that, subsequent to the 5-year period referred to in such paragraph, a tobacco product be deemed to be misbranded if the labeling of the package of such product does not disclose all ingredients, substances, or compounds contained in the product in accordance with the labeling provisions applicable to food ingredients under this Act.

`(3) EXCEPTION- Notwithstanding paragraph (1), the Secretary may require that any ingredient, substance, or compound contained in a tobacco product that is otherwise exempt from disclosure be disclosed if the Secretary determines that such ingredient,

substance, or compound is not safe as provided for in subsection (c).

(e) CONFIDENTIALITY- Any information reported to or otherwise obtained by the Secretary under this section, and that is not required to be disclosed to the public under subsection (d), shall be exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of such section, shall be considered confidential and shall not be disclosed and may not be used by the Secretary as the basis for the establishment or amendment of a performance standard under section 905, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act.

SEC. 911. NONAPPLICATION OF CERTAIN PROVISIONS.

Sections 502(j), 516, 518, and 520(f) shall not apply to tobacco products to which this chapter applies.

Subtitle F--Compliance Plans and Corporate Culture

SEC. 151. COMPLIANCE PLANS.

(a) IN GENERAL- Not later than 1 year after the date of enactment of this Act, and annually thereafter, each manufacturer of a tobacco product shall prepare and submit to the Secretary a plan to ensure that the manufacturer complies with all applicable Federal, State, and local laws with respect to the manufacture and distribution of tobacco products.

(b) REQUIREMENTS- A compliance plan submitted under subsection (a) shall--

(1) contain the assurances of the manufacturer that tobacco products will only be manufactured and distributed in accordance with this Act and the amendments made by this Act;

(2) identify methods to achieve the goals of--

(A) reducing the access of individuals under 18 years of age to tobacco products;
and

(B) reducing the incidence of the underage consumption of tobacco products;

(3) provide for the implementation of internal incentives for achieving the reductions described in paragraph (2);

(4) provide for the implementation of internal incentives for the development of tobacco products with a reduced health risk;

(5) contain a description of the compliance programs implemented under section 152 and the effectiveness of such programs; and

(6) contain such other information as the Secretary may require.

SEC. 152. COMPLIANCE PROGRAMS.

(a) IN GENERAL- Not later than 1 year after the date of enactment of this Act, each manufacturer of a tobacco product shall establish and implement one or more compliance

programs designed to ensure the compliance of the manufacturer with Federal, State, and local laws that limit the access of individuals under 18 years of age to tobacco products.

(b) REQUIREMENTS- A compliance program established under subsection (a) shall--

- (1) implement standards and procedures to be adhered to by employees and agents that are designed to reduce the incidence of violations of the laws described in subsection (a);
- (2) provide for the assignment to 1 or more specific corporate executives of the overall responsibility for ensuring that the manufacturer complies with the standards and procedures applicable under this Act;
- (3) ensure that due care is taken by the corporate executives designated under paragraph (2) to avoid delegating substantial discretionary authority to individuals who the executives know (or should have known through the exercise of due diligence) have a propensity to disregard corporate policy;
- (4) include procedures to inform all employees and agents of the relevant standards and procedures applicable to the manufacturer and the tobacco products manufactured under this Act, including procedures for the implementation of training programs or the dissemination of informational materials;
- (5) provide for the conduct of internal audits, and the establishment of hotlines and other measures to promote compliance with the laws described in subsection (a);
- (6) provide for the application of appropriate disciplinary mechanisms and measures to employees who are directly or indirectly violating the laws described in subsection (a) or otherwise not complying with this Act;
- (7) include measures to respond appropriately where violations of laws described in subsection (a) are alleged to have occurred or are occurring;
- (8) include the promulgation of corporate policy statements that express and explain the commitment of the manufacturer to--
 - (A) compliance with applicable Federal, State, and local laws;
 - (B) reducing the use of tobacco products by individuals who are under 18 years of age; and
 - (C) developing tobacco products that pose a reduced risk to the health of the user;
- (9) provide for the designation of a specific corporate executive to serve as the compliance officer to promote efforts to fulfill the commitment of the manufacturer;
- (10) include provisions for compiling reports on compliance with this Act and the laws described in paragraph (1) and including those reports in materials provided to stockholders; and
- (11) include any other measures determined appropriate by the Secretary.

(c) REPORTING OF NONCOMPLIANCE- Under the compliance program of a manufacturer, the manufacturer's employees shall be encouraged to report to the compliance officer any known or alleged violations of this Act (or an amendment made by this Act), including

violations by distributors or retailers. The compliance officer shall furnish a copy of all such reports to the Secretary for reference to the appropriate Federal or State enforcement authority.

(d) **RETAIL ESTABLISHMENTS-** As part of the compliance program established under this section, a manufacturer shall carry out efforts to encourage and assist (including retail compliance checks and financial incentives) retailers of the tobacco products manufactured by the manufacturer in compliance with the Federal, State, and local laws described in subsection (a).

SEC. 153. WHISTLEBLOWER PROTECTIONS.

(a) **PROHIBITION OF REPRISALS-** An employee of any manufacturer, distributor, or retailer of a tobacco product may not be discharged, demoted, or otherwise discriminated against (with respect to compensation, terms, conditions, or privileges of employment) as a reprisal for disclosing to an employee of the Food and Drug Administration, the Department of Justice, or any State or local regulatory or enforcement authority, information relating to a substantial violation of law related to this Act (or an amendment made by this Act) or a State or local law enacted to further the purposes of this Act.

(b) **ENFORCEMENT-** Any employee or former employee who believes that such employee has been discharged, demoted, or otherwise discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the end of the 2-year period beginning on the date of such discharge, demotion, or discrimination.

(c) **REMEDIES-** If the district court determines that a violation has occurred, the court may order the manufacturer, distributor, or retailer involved to--

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

(d) **LIMITATION-** The protections of this section shall not apply to any employee who--

- (1) deliberately causes or participates in the alleged violation of law or regulation; or
- (2) knowingly or recklessly provides substantially false information to the Food and Drug

Administration, the Department of Justice, or any State or local regulatory or enforcement authority.

SEC. 154. PROVISIONS RELATING TO LOBBYING.

(a) **DEFINITIONS-** For purposes of this section, the terms 'lobbying activities', 'lobbying firm', and 'lobbyist' have the meanings given such terms by section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602).

(b) **GENERAL REQUIREMENT-** A manufacturer, distributor, or retailer of a tobacco product shall require that any lobbyist or lobbying firm employed or retained by the manufacturer, distributor, or retailer, or any other individual who performs lobbying activities on behalf of the manufacturer, distributor, or retailer, as part of the employment or retainer agreement refrain from supporting or opposing any Federal or State legislation, or otherwise supporting or opposing any governmental action on any matter without the express consent of the

manufacturer, distributor, or retailer.

(c) **ADDITIONAL AGREEMENTS-** An individual shall not be employed or retained to perform lobbying activities on behalf of a manufacturer, distributor, or retailer of a tobacco product unless such individual enters into a signed agreement with the manufacturer, distributor, or retailer that acknowledges that the individual--

(1) is fully aware of, and will fully comply with, all applicable laws and regulations relating to the manufacture and distribution of tobacco products;

(2) has reviewed and will fully comply with the requirements of this Act (and the amendments made by this Act);

(3) has reviewed and will fully comply with any consent decree entered into under title VI as that decree applies to the manufacturer, distributor, or retailer involved; and

(4) has reviewed and will fully comply with the business conduct policies and other applicable policies and commitments (including those relating to the prevention of underage tobacco use) of the manufacturer, distributor, or retailer involved.

SEC. 155. TERMINATION OF CERTAIN ENTITIES.

(a) **REQUIREMENT-** Not later than 90 days after the date of enactment of this Act, manufacturers, distributors, or retailers of tobacco products shall provide for the termination of the activities of the Tobacco Institute and the Council for Tobacco Research, U.S.A. and the Institute and Council shall be dissolved.

(b) **ESTABLISHMENT OF OTHER ENTITIES-**

(1) **AUTHORITY-** Manufacturers, distributors, or retailers of tobacco products may form or participate in any trade organization or other industry association only in accordance with this subsection.

(2) **BOARD OF DIRECTORS-** A trade organization or other industry association formed or participated in under this subsection shall--

(A) shall be administered by an independent board of directors, of which--

(i) during the 10-year period beginning on the date on which the organization or association is formed or first participated in under this subsection, not less than 20 percent (at least 1 member) shall be individuals who are not current or former directors, officers, or employees of an entity terminated under subsection (a) or of the members of the association or organization; and

(ii) during the life of the association or organization, no member shall be a director of any of the members of the association or organization;

(B) be administered by officers who are appointed by the board of directors and who are not otherwise employed by any of the members of the association or organization; and

(C) be provided with legal advice by a legal adviser who is appointed by the board of directors and who is not otherwise employed by any of the members of the

association or organization.

(3) BY-LAWS- A trade organization or other industry association formed or participated in under this subsection shall adopt by-laws that--

(A) prohibit meetings by members of the association or organization who are competitors in the tobacco industry except under the sponsorship of the association or organization;

(B) require that every meeting of the board of directors, or a subcommittee of the board or other general committee, proceed under and strictly adhere to an agenda that is approved by the legal counsel and circulated in advance; and

(C) require the taking of minutes that describe the substance of any meeting of the members of the association or organization and the maintenance of such minutes in the records of the association or organization for a period of 5 years following the meeting.

(c) DEPARTMENT OF JUSTICE-

(1) OVERSIGHT- The Attorney General and, as appropriate, State antitrust authorities shall exercise oversight authority over any association or organization to which subsection (b) applies.

(2) ACCESS AND INSPECTION- During the 10-year period beginning on the date on which an association or organization to which subsection (b) applies is formed, the Attorney General and, as appropriate State antitrust authorities shall, upon the provision of reasonable notice to the legal counsel of the association or organization, have access to--

(A) all books, records, meeting agenda and minutes, and other documents maintained by the association or organization; and

(B) the directors, officers, and employees of the association or organization for interview purposes.

(3) MULTI-STATE COMMITTEE- Two or more States, acting through the attorney general of each such State, may establish a multi-State oversight committee to assist the Attorney General in exercising the oversight responsibilities under this section.

(4) CONFIDENTIALITY- The Attorney General shall promulgate regulations to provide that materials provided under paragraph (2) are protected with appropriate confidentiality protections.

(d) ANTITRUST EXEMPTIONS- The provisions of the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (29 U.S.C. 52 et seq.), and any other Federal or State antitrust laws shall not apply to an association or organization to which subsection (b) applies.

SEC. 156. ENFORCEMENT.

(a) ASSESSMENT-

(1) IN GENERAL- The Secretary may assess a civil penalty against any manufacturer of a tobacco product of up to \$25,000 per day of violation whenever, on the basis of any

available information, the Secretary finds that such manufacturer has violated or is violating any requirement of this subtitle.

(2) **LIMITATION-** The authority of the Secretary under this subsection shall be limited to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred not more than 12 months prior to the initiation of the administrative action, except where the Secretary and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for action.

(3) **JUDICIAL REVIEW-** Any determination by the Administrator and the Attorney General under paragraph (2) shall not be subject to judicial review.

(b) PROCEDURE-

(1) **IN GENERAL-** A civil penalty under subsection (a) shall be assessed by the Secretary by an order made after an opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5 of the United States Code. The Secretary shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Secretary shall give written notice to the manufacturer against whom the assessment is being made of the Secretary's proposal to issue such an order and provide such manufacturer with an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such manufacturer.

(2) **MODIFICATIONS-** The Secretary may compromise, modify, or remit, with or without conditions, any penalty which may be imposed under this section.

(c) FIELD CITATION PROGRAM-

(1) **IMPLEMENTATION-** The Secretary may provide for the implementation, after consultation with the Attorney General and the States, of a field citation program through regulations establishing appropriate minor violations of this subtitle for which field citations, assessing civil penalties not to exceed \$5,000 per day of violation, may be issued by officers or employees designated by the Secretary.

(2) **HEARING-** Any manufacturer to which a field citation is assessed may, within a reasonable time as prescribed by the Secretary through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5 of the United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(3) **NO DEFENSE-** Payment of a civil penalty required by a field citation under this paragraph shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the subtitle, if the violation continues.

(d) JUDICIAL REVIEW-

(1) **RIGHT-** Any manufacturer against whom a civil penalty is assessed under subsection (c) or to which a penalty order is issued under subsection (a) may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred or in which the principal place

of business of the manufacturer is located, by filing in such court within 30 days following the date the penalty order becomes final under subsection paragraph (b), the assessment becomes final under subsection (c), or a final decision following a hearing under subsection (c) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Secretary and the Attorney General.

(2) FILING- Within 30 days after a filing under paragraph (1), the Secretary shall file in the court involved a certified copy, or certified index, as appropriate, of the record on which the penalty order or assessment was issued.

(3) ACTION BY COURT- A court shall not set aside or remand a penalty order or assessment under this section unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion.

(4) LIMITATION- A penalty order or assessment under this section shall not be subject to review by any court except as provided in this subsection. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(e) FAILURE TO PAY-

(1) IN GENERAL- If any manufacturer fails to pay an assessment of a civil penalty or fails to comply with an penalty order under this section--

(A) after the order or assessment has become final; or

(B) after a court, in an action brought under subsection (d), has entered a final judgment in favor of the Secretary;

the Secretary shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review.

(2) ENFORCEMENT EXPENSES- Any manufacturer who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such manufacturer's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(f) Scarlet Letter Advertising-

TITLE II--REDUCTION IN UNDERAGE TOBACCO USE

SEC. 201. PURPOSE.

It is the purpose of this title to encourage the achievement of dramatic and immediate reductions in the number of underage consumers of tobacco products through the imposition of

substantial financial surcharges on manufacturers if certain underage tobacco-use reduction targets are not met.

SEC. 202. DETERMINATION OF UNDERAGE USE BASE PERCENTAGES.

(a) **CIGARETTES-** For purposes of this section, the underage use base percentage for cigarettes shall be a percentage determined by the Secretary, weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, based on--

- (1) the average of the percentages of 12th graders (individuals who are 16 or 17 years of age) who used cigarette products on a daily basis for each of the calendar years 1986 through 1996;
- (2) the average of the percentages of 10th graders (individuals who are 14 or 15 years of age) who used cigarette products on a daily basis for each of the calendar years 1991 through 1996; and
- (3) the average of the percentages of 8th graders (individuals who are 13 years of age) who used cigarette products on a daily basis for each of the calendar years 1991 through 1996.

(b) **SMOKELESS TOBACCO-** For purposes of this section, the underage use base percentage for smokeless tobacco products shall be a percentage determined by the Secretary, weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, based on--

- (1) the average of the percentages of 12th graders (individuals who are 16 or 17 years of age) who used smokeless tobacco products on a daily basis in 1996;
- (2) the average of the percentages of 10th graders (individuals who are 14 or 15 years of age) who used smokeless tobacco products on a daily basis in 1996; and
- (3) the average of the percentages of 8th graders (individuals who are 13 years of age) who used smokeless tobacco products on a daily basis in 1996.

(c) **USE OF CERTAIN DATA OR METHODOLOGY-** For purposes of determining the percentages under paragraphs (1) through (3) of subsections (a) and (b), the Secretary shall use the data contained in the National High School Drug Use Survey entitled Monitoring the Future by the University of Michigan or such other comparable index, as determined appropriate by the Secretary after notice and an opportunity for a hearing, that utilizes methodology identical to that used by the University of Michigan in such survey.

SEC. 203. ANNUAL DAILY INCIDENCE OF UNDERAGE USE OF TOBACCO PRODUCTS.

(a) **ANNUAL DETERMINATION-** Not later than the expiration of the 5-year period beginning on the date of enactment of this Act, and annually thereafter, the Secretary shall determine the average annual incidence of the daily use of tobacco products by individuals who are under 18 years of age.

(b) **CIGARETTES-** With respect to cigarette products, a determination under subsection (a) for a year shall be based on the percentage, as weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, of--

(1) 12th graders (individuals who are 16 or 17 years of age) who used cigarette products on a daily basis during the year involved;

(2) 10th graders (individuals who are 14 or 15 years of age) who used cigarette products on a daily basis during the year involved; and

(3) 8th graders (individuals who are 13 years of age) who used cigarette products on a daily basis during the year involved.

(c) **SMOKELESS TOBACCO**- With respect to smokeless tobacco products, a determination under subsection (a) for a year shall be based on the percentage, as weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, of--

(1) 12th graders (individuals who are 16 or 17 years of age) who used smokeless tobacco products on a daily basis during the year involved;

(2) 10th graders (individuals who are 14 or 15 years of age) who used smokeless tobacco products on a daily basis during the year involved; and

(3) 8th graders (individuals who are 13 years of age) who used cigarette smokeless tobacco on a daily basis during the year involved.

(d) **USE OF CERTAIN DATA OR METHODOLOGY**-

(1) **IN GENERAL**- For purposes of determining the percentages under paragraphs (1) through (3) of subsections (b) and (c), the Secretary shall use the data contained in the National High School Drug Use Survey entitled Monitoring the Future by the University of Michigan (if such survey is still being undertaken) or such other comparable index, as determined appropriate by the Secretary after notice and an opportunity for a hearing, that utilizes methodology identical to that used by the University of Michigan in such survey.

(2) **ALTERATION OF METHODOLOGY**- If the Secretary determines that the methodology used by the University of Michigan in the survey referred to in paragraph (1) has been altered in a material manner from the methodology used during the period from 1986 to 1996 (including by altering States or regions on which the survey is based), the Secretary, after notice and an opportunity for a hearing, shall use percentages based on an index developed by the Secretary that utilizes methodology identical to that used by the University of Michigan in such survey.

SEC. 204. REQUIRED REDUCTION IN UNDERAGE TOBACCO USE.

(a) **IN GENERAL**- For purposes of assessing surcharges under section 205, the Secretary shall determine whether the required percentage reduction in the underage use of tobacco products for a year (based on the tables contained in subsection (b)) has been achieved for the year involved. Such determination shall be based on--

(1) with respect to cigarette products, the average annual incidence of the daily use of tobacco products by individuals who are under 18 years of age for the year involved (as determined under section 203(b)) as compared to the underage use base percentage for cigarette products (as determined under section 202(a)); and

(2) with respect to smokeless tobacco products, the average annual incidence of the daily use of smokeless tobacco products by individuals who are

under 18 years of age for the year involved (as determined under section 203(c)) as compared to the underage use base percentage for smokeless tobacco products (as determined under section 202(b)).

(b) PERCENTAGE REDUCTION IN UNDERAGE USE OF TOBACCO PRODUCTS- For purposes of subsection (a), the required percentage reduction in the underage use of tobacco products with respect to each tobacco product shall be determined according to the following tables:

(1) CIGARETTES-

`Calender year after enactment--

The percentage decrease in the use of cigarette products--

	Fifth
30	
	Sixth
30	
	Seventh
50	
	Eighth
50	
	Ninth
50	
	Tenth and thereafter
60	

(2) SMOKELESS TOBACCO PRODUCTS-

`Calender year after enactment--

The percentage decrease in the use of smokeless tobacco products--

	Fifth
25	

Sixth

25

Seventh

35

Eighth

35

Ninth

35

Tenth and thereafter

45

SEC. 205. APPLICATION OF SURCHARGES.

(a) IN GENERAL- If the Secretary determines that the percentage reduction in the underage use of tobacco products for a year has not been achieved as required under section 204, the Secretary shall impose a surcharge on the manufacturers of the tobacco products involved.

(b) AMOUNT OF SURCHARGE-

(1) IN GENERAL- The amount of any surcharge to be imposed under this section for a calendar year shall be equal to the product of--

(A) \$80,000,000; and

(B) the number of applicable surcharge percentage points as determined under subsection (c).

(2) ADJUSTMENTS- The amount applicable under paragraph (1) shall be annually adjusted by the Secretary based on--

(A) with respect to subparagraph (A) of such paragraph--

(i) the proportional percentage increase or decrease, as compared to calendar year 1995, in the population of individuals residing in the United States who are at least 13 years of age but less than 18 years of age;

(ii) the proportional percentage increase or decrease, as compared to calendar year 1996, in the average profit per unit (measured in cents and weighted by annual sales) earned by tobacco manufacturers for the tobacco product involved (as determined by the Secretary through a contract with a nationally recognized accounting firm having no connection to tobacco manufacturers); and

(B) any methodology utilized to avoid the double counting of underage individuals whose tobacco use has previously resulted in the imposition of a surcharge, limited to the extent that there were not other underage users of tobacco in such previous years for whom a surcharge was not paid because of the limitation contained in section 206.

(3) PROFIT PER UNIT- For purposes of paragraph (2)(A)(ii), the average profit per unit for calendar 1996 shall be determined using the operating profit reported by manufacturers to the Securities and Exchange Commission.

(c) DETERMINATION OF APPLICABLE SURCHARGE PERCENTAGE POINTS-

(1) IN GENERAL- Except as provided in paragraph (2), with respect to a calendar year, the applicable surcharge percentage points shall be equal to the percentage point difference between--

(A) the required percentage reduction in the underage use of the tobacco product involved for the year (based on the tables in section 204(b)); and

(B) the number of percentage points by which the average annual incidence of the daily use of the tobacco products involved by individuals who are under 18 years of age for the year (as determined under section 203) is less than the underage use base percentage for such products (as determined under section 202).

(2) ADJUSTMENT- If for any calendar year the Secretary determines that the average annual incidence of the daily use of the tobacco products involved by individuals who are under 18 years of age (as determined under section 203) is greater than the underage use base percentage for such products (as determined under section 202), the applicable surcharge percentage point shall be equal to--

(A) the percentage point amount determined under paragraph (1)(A); and

(B) the number of percentage points by which the average annual incidence of the daily use of the tobacco products involved by individuals who are under 18 years of age (as determined under section 203) is greater than the

underage use base percentage for such products (as determined under section 202).

(3) TYPE OF PRODUCT- Separate determinations shall be made under this section for cigarette products and smokeless tobacco products.

(d) LIMITATION- The total amount of surcharges imposed with respect to each type of tobacco product (cigarette products or smokeless tobacco products) under this section shall not exceed \$2,000,000,000 (adjusted each year by the Secretary to account for inflation) for any calendar year.

(e) JOINT AND SEVERAL OBLIGATION- Any surcharge imposed under this section with respect to a tobacco product (cigarette products or smokeless tobacco products) shall be the joint and several obligation of all manufacturers of such product as allocated by the market share of each such manufacturer with respect to such product. The market share of each manufacturer for each such product shall be based on the actual Federal excise tax payments made by such manufacturers for each such product under the Internal Revenue Code of 1986.

(f) **ASSESSMENT**- Not later than May 1 of each year in which a surcharge will be imposed under this section, the Secretary shall assess to each manufacturer the amount for which such manufacturer is obligated. Not later than July 1 of any year in which a manufacturer receives an assessment under this section, the manufacturer shall pay such assessment in full or be subject to such interest on such amount as the Secretary may by regulation prescribe.

(g) **USE OF AMOUNTS**- Amounts received under this section shall be used as provided for in section 517.

(h) **PROHIBITION**- No stay or other injunctive relief may be granted by the Secretary or any court that has the effect of enjoining the imposition and collection of the surcharges to be applied under this section.

SEC. 206. ABATEMENT PROCEDURES.

(a) **PETITIONS**- Upon payment by a manufacturer of the amount assessed to the manufacturer under section 205(f), the manufacturer may submit a petition to the Secretary for an abatement of the assessment. A notice of such abatement petition shall be submitted to the attorney general of each State.

(b) **HEARING**- The Secretary shall provide for the conduct of a hearing on an abatement petition received under subsection (a) pursuant to the procedures described in sections 554, 556, and 557 of title 5, United States Code. The attorney general of any State shall be permitted to be heard at any hearing conducted under this subsection.

(c) **BURDEN**- The burden at any hearing under subsection (b) shall be on the manufacturer to prove, by a preponderance of the evidence, that the manufacturer should be granted the abatement.

(d) **BASIS OF DECISION**- Any decision regarding a petition for an abatement under this section shall be based on a determination as to whether--

(1) the manufacturer has acted in good faith and in full compliance with this Act (and any amendment made by this Act) and any regulations or State or local laws promulgated in furtherance of this Act;

(2) the manufacturer has pursued all reasonably available measures to attain the reductions;

(3) there is any evidence of any direct or indirect action by the manufacturer to undermine the achievement of the reductions required under section 204 or to undermine any other provision of this Act (or amendment); and

(4) the manufacturer has taken (or failed to take) any other action as determined appropriate by the Secretary.

(e) **AMOUNT**- Upon a determination granting an abatement under this section, the Secretary shall order the abatement of not to exceed 75 percent of the amount paid by the manufacturer, together with interest that may have accrued on such amount during the period between the date on which payment by the manufacturer was made and the date on which the abatement order was granted. Such interest shall be equal to that provided for the average 52-week Treasury Bill during the period involved.

(f) **AGGRIEVED PARTIES**- Any manufacturer or attorney general of any State that is aggrieved by an abatement that is granted under this section may seek judicial review of the abatement decision within 30 days of the date of such decision in the Court of Appeals for the District of Columbia Circuit. Review in such cases shall be subject to the procedures described in sections 701 through 706 of title 5, United States Code.

(g) **PROHIBITION**- A manufacturer may not file a petition under subsection (a) until such time as the manufacturer has fully paid the Secretary the amount assessed to the manufacturer under section 205(f).

TITLE III--STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

SEC. 301. DEFINITIONS.

In this title--

(1) **ADMINISTRATOR**- The term 'Administrator' means the Administrator of the Occupational Safety and Health Administration.

(2) **PUBLIC FACILITY**-

(A) **IN GENERAL**- The term 'public facility' means any building regularly entered by 10 or more individuals at least 1 day per week, including any such building owned by or leased to a Federal, State, or local government entity. Such term shall not include any building or portion thereof regularly used for residential purposes.

(B) **EXCLUSIONS**- Such term does not include a building which is used as a restaurant (other than a fast food restaurant), bar, private club, hotel guest room, casino, bingo parlor, tobacco merchant, or prison.

(C) **FAST FOOD RESTAURANT**- The term 'fast food restaurant' means any restaurant or chain of restaurants that primarily distributes food through a customer pick-up (either at a counter or drive-through window). The Administrator of the Occupational Safety and Health Administration may promulgate regulations to clarify this subparagraph to ensure that the intended inclusion of establishments catering largely to individuals under 18 years of age is achieved.

(3) **RESPONSIBLE ENTITY**- The term 'responsible entity' means, with respect to any public facility, the owner of such facility except that, in the case of any such facility or portion thereof which is leased, such term means the lessee.

SEC. 302. SMOKE-FREE ENVIRONMENT POLICY.

(a) **POLICY REQUIRED**- In order to protect children and adults from cancer, respiratory disease, heart disease, and other adverse health effects from breathing environmental tobacco smoke, the responsible entity for each public facility shall adopt and implement at such facility a smoke-free environment policy which meets the requirements of subsection (b).

(b) **ELEMENTS OF POLICY**-

(1) IN GENERAL- Each smoke-free environment policy for a public facility shall--

(A) prohibit the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the facility and on facility property within the immediate vicinity of the entrance to the facility; and

(B) post a clear and prominent notice of the smoking prohibition in appropriate and visible locations at the public facility.

(2) EXCEPTION- The smoke-free environment policy for a public facility may provide an exception to the prohibition specified in paragraph (1) for 1 or more specially designated smoking areas within a public facility if such area or areas meet the requirements of subsection (c).

(c) SPECIALLY DESIGNATED SMOKING AREAS- A specially designated smoking area meets the requirements of this subsection if--

(1) the area is ventilated in accordance with specifications promulgated by the Administrator that ensure that air from the area is directly exhausted to the outside and does not recirculate or drift to other areas within the public facility;

(2) the area is maintained at negative pressure, as compared to adjoining nonsmoking areas, as determined under regulations promulgated by the Administrator; and

(3) nonsmoking individuals do not have to enter the area for any purpose while smoking is occurring in such area.

Cleaning and maintenance work shall be conducted in such area only while no smoking is occurring in the area.

SEC. 303. CITIZEN ACTIONS.

(a) IN GENERAL- An action may be brought to enforce the requirements of this title by any aggrieved person, any State or local government agency, or the Administrator.

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

(c) NOTICE- An aggrieved person shall give any alleged violator notice of at least 60 days prior to commencing an action under this section. No action may be commenced by an aggrieved person under this section if such alleged violator complies with the requirements of this title within such 60-day period and thereafter.

(d) COSTS- The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and

expert witness fees) to any prevailing plaintiff, whenever the court determines such award is appropriate.

(e) **PENALTIES-** The court, in any action under this section to apply civil penalties, shall have discretion to order that such civil penalties be used for projects which further the policies of this title. The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects.

SEC. 304. PREEMPTION.

Nothing in this title shall preempt or otherwise affect any other Federal, State or local law which provides protection from health hazards from environmental tobacco smoke.

SEC. 305. REGULATIONS.

The Administrator is authorized to promulgate such regulations as the Administrator deems necessary to carry out this title.

SEC. 306. EFFECTIVE DATE.

The provisions of this title shall take effect on the date that is 1 year after the date of enactment of this Act.

TITLE IV--PUBLIC HEALTH AND OTHER PROGRAMS

Subtitle A--Public Health Block Grant Program

SEC. 401. PUBLIC HEALTH TRUST FUND.

(a) ESTABLISHMENT-

(1) **IN GENERAL-** The Secretary shall establish, as a separate fund within the Trust Fund established under section 401, a trust fund to be known as the 'Public Health Trust Fund', consisting of such amounts as may be appropriated or credited to the Trust Fund.

(2) **TRUSTEES-** The trustees of the Trust Fund shall be the Commissioner and the Secretary.

(b) **TRANSFERS-** There are hereby appropriated and transferred to the Trust Fund the amounts described in section 401(d)(1) with respect to the year involved.

(c) **EXPENDITURES FROM TRUST FUND-** Amounts in the Public Health Trust Fund shall be available in each calendar year, as provided by appropriations Act, for block grants under section 502.

SEC. 402. BLOCK GRANTS TO STATES.

(a) **IN GENERAL-** For the purpose described in subsection (b), the Secretary shall award a block grant to each State in each fiscal year in an amount based on the allotment of the State as determined in accordance with section 503.

(b) **AUTHORIZED ACTIVITIES-** A State shall use amounts received under a block grant only for the purpose of planning, carrying out, and evaluating activities as provided for in section 504.

(c) APPLICATION- To be eligible to receive a grant under this subtitle a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including such assurances as the Secretary may require regarding the compliance of the State with the requirements of this Act.

SEC. 403. ALLOTMENTS.

(a) IN GENERAL- Of the amounts appropriated and available for block grants for a fiscal year under section 502, the Secretary shall allot to each State an amount determined under the allotment formula under subsection (b).

(b) ALLOTMENT FORMULA-

(c) REALLOTMENTS- To the extent that all the funds appropriated under section 501(c) for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because--

(1) one or more States have not submitted an application in accordance with section 502 (c) for the fiscal year; or

(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment;

such excess shall be reallocated among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subsection.

(d) INDIAN TRIBES AND TRIBAL ORGANIZATIONS-

(1) IN GENERAL- If the Secretary--

(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this subtitle be provided directly by the Secretary to such tribe or organization; and

(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this subtitle;

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for the fiscal year the amount determined under paragraph (2).

(2) AMOUNT- The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a) an amount to be determined by a formula developed by the Secretary after consultation with the Secretary of the Interior.

(3) GRANT- The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(4) PLAN- In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

(5) DEFINITIONS- The terms 'Indian tribe' and 'tribal organization' shall have the same meaning given such terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(b) and (c)).

SEC. 404. USE OF FUNDS.

(a) IN GENERAL- Amounts provided to a State under a grant under this subtitle shall be used--

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

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

(3) to provide health care coverage, either directly or through arrangements with other entities, for uninsured individuals under 18 years of age who reside in the State;

(4) to establish a State tobacco products liability judgments and settlement fund, as provided for in subsection (c);

(5) to reimburse the State for expenses incurred in carrying out the tobacco licensure requirements of subtitle D of title I; and

(6) to carry out any other activities determined appropriate by the State.

(b) LIMITATIONS ON USES- A State may not use amounts provided under a grant under this subtitle for programs or projects not approved of by the Secretary.

(c) JUDGMENT AND SETTLEMENT FUND-

(1) IN GENERAL- Each State that receives a grant under this subtitle shall establish a fund for the purpose of making payments under paragraph (2).

(2) PAYMENTS- The fund established under paragraph (1) shall be used to make payments to individuals who have obtained a judgment in a tobacco-related action brought in a State court, or who have entered into a settlement of such an action, of the amount of any award under such judgment or settlement that represents punitive damages.

SEC. 405. WITHHOLDING OF FUNDS.

(a) AUTHORITY-

(1) IN GENERAL- The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not use its allotment in accordance with the requirements of this subtitle. The Secretary shall withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(2) INVESTIGATION- The Secretary may not institute proceedings to withhold funds under paragraph (1) unless the Secretary has conducted an

investigation concerning whether the State has used its allotment in accordance with the requirements of this subtitle. Investigations required by this paragraph shall be conducted within the affected State by qualified investigators.

(3) RESPONSE TO COMPLAINTS- The Secretary shall respond in an expeditious manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the requirements of this subtitle.

(4) MINOR FAILURE- The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the requirements of this subtitle.

(b) INVESTIGATIONS- The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this subtitle in order to evaluate compliance with the requirements of this subtitle.

(c) AVAILABILITY OF INFORMATION- Each State, and each entity which has received funds from an allotment made to a State under this subtitle, shall make available to the Secretary, for examination, copying, or mechanical reproduction on or off the premises, appropriate books, documents, papers, and records of the entity upon a reasonable request therefore.

Subtitle B--Other Programs

SEC. 411. NATIONAL SMOKING CESSATION PROGRAM.

(a) ESTABLISHMENT- The Secretary shall establish a program to be known as the 'National Smoking Cessation Program' under which the Secretary may award grants to eligible public and nonprofit entities and individuals for smoking cessation purposes.

(b) ELIGIBILITY-

(1) OF ENTITIES- To be eligible to receive a grant under this section an entity shall--

(A) be a public or nonprofit private entity;

(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(C) provide assurances that amounts received under the grant will be used in accordance with subsection (c)(1); and

(D) meet any other requirements determined appropriate by the Secretary.

(2) OF INDIVIDUALS- To be eligible to receive a grant under this section an individual shall--

(A) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(B) provide assurances that amounts received under the grant will be used only in accordance with subsection (c)(2); and

(C) meet any other requirements determined appropriate by the Secretary.

(c) USE OF FUNDS-

(1) BY ENTITIES- An entity that receives a grant under this section shall use amounts provided under the grant to establish or administer tobacco product use cessation programs that are approved in accordance with subsection (d).

(2) BY INDIVIDUALS- An individual that receives a grant under this section shall use amounts provided under the grant to enroll in a tobacco product use cessation program or to purchase a tobacco product cessation device that has been approved in accordance with subsection (d). Grants to individuals under this section may be in the form of vouchers that may be used to pay the costs of enrollment in an approved program or to purchase an approved device.

(d) APPROVAL OF CESSATION PROGRAM OR DEVICES- Using the best available scientific information, the Secretary shall promulgate regulations to provide for the approval of tobacco product use cessation programs and devices. Such regulations shall be designed to ensure that tobacco product users, if requested, are provided with reasonable access to safe and effective cessation programs and devices. Such regulations shall ensure that such individuals have access to a broad range of cessation options that are tailored to the needs of the individual tobacco user.

(e) FUNDING- The Secretary shall use amounts available under section 401(d)(2) to carry out this section.

SEC. 412. NATIONAL REDUCTION IN TOBACCO USAGE PROGRAM.

(a) ESTABLISHMENT- The Secretary shall establish a program to be known as the 'National Reduction in Tobacco Usage Program' under which the Secretary may award grants to eligible public and nonprofit entities to carry out activities designed to reduce the use of tobacco products.

(b) ELIGIBILITY- To be eligible to receive a grant under this section an entity shall--

(1) be a State health department, other public entity, or a nonprofit private entity;

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(3) provide assurances that amounts received under the grant will be used in accordance with subsection (c); and

(4) meet any other requirements determined appropriate by the Secretary.

(c) USE OF FUNDS- An entity that receives a grant under this section shall use amounts provided under the grant to--

(1) carry out media-based and nonmedia-based education, prevention, and cessation campaigns designed to discourage the use of tobacco products by individuals who are

under 18 years of age and to encourage those who use such products to quit;

(2) carry out research concerning, and provide for the development and public dissemination of, technologies and methods to reduce the risk of dependence and injury from tobacco product usage and exposure;

(3) provide for the identification, testing, and evaluation of the health effects of both tobacco and non-tobacco constituents of tobacco products; or

(4) carry out any other activities determined by the Secretary to be consistent with the purposes of this Act.

(d) FUNDING- The Secretary shall use amounts available under section 401(d)(3) to carry out this section.

SEC. 413. NATIONAL TOBACCO-FREE PUBLIC EDUCATION PROGRAM.

(a) ESTABLISHMENT OF BOARD-

(1) IN GENERAL- The Secretary shall establish an independent board to be known as the 'Tobacco-Free Education Board' (referred to in this section as the 'Board') to enter into contracts with or award grants to eligible public and nonprofit private entities to carry out public informational and educational activities designed to reduce the use of tobacco products.

(2) APPOINTMENT- The Board shall be composed of 9 members to be appointed by the Secretary, of which--

(A) at least 3 such members shall be an individual who is widely recognized by the general public for achievement in the athletic, cultural, entertainment, educational, business, or political field; and

(B) at least 3 of whom shall be individuals who are heads of a major public health organizations.

(3) TERMS AND VACANCIES- The members of the Board shall serve staggered terms as determined appropriate at the time of appointment by the Secretary. Any vacancy in the Board shall not affect its powers, but shall be filled in the same manner as the original appointment.

(4) POWERS-

(A) HEARINGS- The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out the purposes of this section.

(B) INFORMATION FROM FEDERAL AGENCIES- The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.

(5) PERSONNEL MATTERS-

(A) COMPENSATION- Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the

daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

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

(b) ESTABLISHMENT OF PROGRAM- The Secretary shall establish a program to be known as the 'National Tobacco-Free Public Education Program' under which the Board may enter into contracts with or award grants to eligible public and nonprofit private entities to carry out public informational and educational activities designed to reduce the use of tobacco products.

(c) ELIGIBILITY- To be eligible to receive a grant under this section an entity shall--

(1) be a--

(A) public entity or a State health department; or

(B) nonprofit private entity that--

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

(ii) has a demonstrated record of working effectively to reduce tobacco product use; and

(iii) has expertise in conducting a multi-media communications campaign;

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the activities to be conducted using amounts received under the grant or contract;

(3) provide assurances that amounts received under the grant will be used in accordance with subsection (d); and

(4) meet any other requirements determined appropriate by the Secretary.

(d) USE OF FUNDS- An entity that receives a grant or contract under this section shall use amounts provided under the grant or contract to conduct multi-media public educational or informational campaigns that are designed to discourage and de-glamorize the use of tobacco products. Such campaigns shall be designed to discourage the initiation of tobacco use by minors and encourage those using such products to quit.

(e) NEEDS OF CERTAIN POPULATIONS- In awarding grants and contracts under this section, the Board shall take into consideration the needs of particular populations.

(f) FUNDING- The Secretary shall use amounts available under section 401(d)(4) to carry out this section.

SEC. 414. NATIONAL EVENT SPONSORSHIP PROGRAM.

(a) **ESTABLISHMENT-** The Secretary shall establish a program to be known as the 'National Event Sponsorship Program' under which the Secretary may award grants to eligible entities or individuals for the sponsorship of activities described in subsection (c).

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

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including--

(A) a description of the event, activity, team, or entry for which the grant is to be provided;

(B) documentation that the event, activity, team, or entry involved was sponsored or otherwise funded by a tobacco manufacturer or distributor prior to the date of the application; and

(C) a certification that the applicant is unable to secure funding for the event, activity, team, or entry involved from sources other than those described in paragraph (2);

(2) provide assurances that amounts received under the grant will be used in accordance with subsection (d); and

(3) meet any other requirements determined appropriate by the Secretary.

(c) **PERMISSIBLE SPONSORSHIP ACTIVITIES-** Events, activities, teams, or entries for which a grant may be provided under this section include--

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

(2) the participation of a team that was sponsored in whole or in part by a tobacco manufacturer or distributor prior to the date of enactment of this Act, in an athletic event or activity; and

(3) the payment of a portion or all of the entry fees of, or other financial or technical support provided to, an individual or team by a tobacco manufacturer or distributor prior to the date of enactment of this Act, for participation of the individual in an athletic, musical, artistic, or other social or cultural event.

(d) **USE OF FUNDS-** Amounts received under a grant under this section shall be used to--

(1)(A) pay the costs associated with the sponsorship of an event or activity described in subsection (c)(1);

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

(C) pay the required entry fees associated with the participation of an individual or team

in an event or activity described in subsection (c)(3);

(D) provide financial or technical support to an individual or team in connection with the participation of that individual or team in an activity described in subsection (c)(3); or

(E) for any other purposes determined appropriate by the Secretary; and

(2) promote images or activities to discourage individuals from using tobacco products or encourage individuals who use such products to quit.

(e) **ALLOCATION OF UNEXPENDED FUNDS-** Amounts available for purposes of carrying out this section and remaining available at the end of the 10-year period described in section 401(d)(5), shall be used as follows:

(1) 50 percent of such amounts shall be used to supplement amounts available for multimedia campaigns under section 512;

(2) 25 percent of such amounts shall be used to supplement amounts available for enforcement purposes under section 401(d)(8); and

(3) 25 percent of such amounts shall be used to supplement amounts available for community action programs under section 515.

(f) **FUNDING-** The Secretary shall use amounts available under section 401(d)(5) to carry out this section.

SEC. 415. NATIONAL COMMUNITY ACTION PROGRAM.

(a) **ESTABLISHMENT-** The Secretary shall establish a program to be known as the 'National Community Action Program' under which the Secretary may award grants to eligible State and local governmental entities to carry out community-based tobacco control efforts that are designed to encourage community involvement in reducing tobacco product use.

(b) **ELIGIBILITY-** To be eligible to receive a grant under this section an entity shall--

(1) be a State or local public entity;

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(3) provide assurances that amounts received under the grant will be used in accordance with the purposes of this section; and

(4) meet any other requirements determined appropriate by the Secretary.

(c) **FUNDING-** The Secretary shall use amounts available under section 401(d)(6) to carry out this section.

SEC. 416. NATIONAL CESSATION RESEARCH PROGRAM.

(a) **ESTABLISHMENT-** The Secretary shall establish a program to be known as the 'National Cessation Research Program' under which the Secretary may award grants to eligible entities for research concerning, and the development of methods, drugs, and devices to discourage

individuals from using tobacco products and to assist individuals who use such products in quitting such use.

(b) Eligibility-

(c) Use of Funds-

(d) Additional Requirements-

(e) FUNDING- The Secretary shall use amounts available under section 401(d)(7) to carry out this section.

SEC. 417. USE OF SURCHARGE PAYMENTS.

(a) IN GENERAL- Of the amount made available to the Secretary each year under section 401(d)(9), the Secretary shall--

(1) use not less than 90 percent of such amount to award grants to State and local governmental and public health agencies to carry out activities to further reduce the use of tobacco products by individuals who are under 18 years of age; and

(2) use not more than 10 percent of such amount for the administrative costs associated with the administration of title II and of chapter IX of the Federal Food, Drug and Cosmetic Act (as added by section 143(3)).

(b) TRANSFER OF CERTAIN AMOUNTS- If the Secretary determines that the administrative costs described in subsection (a)(2) are less than the amount available under section subsection, the Secretary may--

(1) transfer any such excess amount to other Federal, State, or local agencies to meet the needs associated with the reduction of underage tobacco usage; or

(2) expend such amounts directly for activities to expedite the reduction of underage tobacco use.

(c) ELIGIBILITY- To be eligible to receive a grant under this section an entity shall--

(1) be a State or local governmental or public health agency;

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(3) provide assurances that amounts received under the grant will be used in accordance with this section; and

(4) meet any other requirements determined appropriate by the Secretary.

(d) FUNDING- The Secretary shall use amounts available under section 401(d)(9) to carry out this section.

TITLE V--CONSENT DECREES, NON-PARTICIPATING MANUFACTURERS, AND STATE ENFORCEMENT

SEC. 501. PURPOSES.

It is the purpose of this title to provide for the establishment of consent decrees and the imposition of certain

payment provisions, in addition to those otherwise provided for under Federal or State laws, to encourage manufacturers, distributors, and retailers to comply with this Act, and to otherwise provide for the enforcement of this Act with respect to non-participating manufacturers.

Subtitle A--Consent Decrees and Non-Participating Manufacturers**SEC. 511. CONSENT DECREES.**

(a) **REQUIREMENT-** To be eligible to receive payments under title V, a State, and to be eligible to receive liability protections under title VII, a tobacco manufacturer or distributor, shall enter into consent decrees under this section to be effective on the date of enactment of this Act.

(b) **TERMS AND CONDITIONS-**

(1) **IN GENERAL-** The terms and conditions contained in the consent decrees described in subsection (a) shall contain provisions to clarify the application and requirements of this Act (and the amendments made by this Act), including provisions relating to--

(A) restrictions on tobacco product advertising and marketing and youth access to such products;

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

(C) restrictions on tobacco lobbying;

(D) the disclosure of tobacco smoke constituents;

(E) the disclosure of nontobacco ingredients found in tobacco products;

(F) the disclosure of existing and future documents relating to health, toxicity, and addition related to tobacco product usage;

(G) compliance and corporate culture;

(H) the obligation of manufacturers to make payments for the benefit of States;

(I) the obligation of manufacturers to interact only with distributors and retailers that operate in compliance with the applicable provisions of Federal, State, or local law regarding the marketing and sale of tobacco products;

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

(K) the dismissal of pending litigation as required under title VII and as agreed to by the parties to the decree; and

(L) any other matter determined appropriate by the Secretary or the parties

involved.

(2) **LIMITATIONS-** The terms and conditions contained in the consent decrees described in subsection (a) shall not contain provisions relating to--

- (A) tobacco product design, performance, or modification;
- (B) manufacturing standards and good manufacturing practices;
- (C) testing and regulation with respect to toxicity and ingredients approval; and
- (D) the required percentage reductions in the underage use of tobacco products for a year under section 204.

(3) **WAIVER OF CONSTITUTIONAL CLAIMS-** The terms and conditions contained in the consent decrees described in subsection (a) shall include a provision waiving the Federal or State constitutional claims of the parties and providing for the severability of the provisions of the decree.

(4) **CONSTRUCTION-** The terms and conditions contained in the consent decrees described in subsection (a) shall provide that the terms of the decree will be construed in a manner that is consistent with the provision of this Act.

(c) **APPROVAL-** To be valid under this section, the provisions of a consent decree must be approved by the Secretary prior to approval or entry by a court.

(d) **ENFORCEMENT-**

(1) **CHANGES IN LAW-** The provisions of a consent decree entered under this section shall remain in effect and enforceable regardless of whether the provisions of this Act are amended, except that any amendments to this Act that--

- (A) establish Federal requirements that are in conflict with obligations contained in the consent decrees shall render such obligations unenforceable;
- (B) require allocations of funds that are in conflict with the allocation contained in the consent decrees shall render such consent decree allocation unenforceable; and
- (C) require warnings, labeling, or packaging that conflicts with the warning, labeling, or packaging requirements of the consent decree, shall require that modifications be made in the consent decree to conform with such amendments.

(2) **BY STATE-**

(A) **IN GENERAL-** A State may bring an action to enforce the provisions of any consent decree under this section in any appropriate State court. Such proceedings may seek injunctive relief only and may not seek criminal or monetary sanctions. Enforcement of any injunctive relief provided under a State action under this section shall be permitted under any applicable State law.

(B) **CONSISTENCY-** The Secretary, in consultation with the Attorney General, shall promulgate regulations to ensure the consistency of State court ruling with respect to conduct under a consent decree that is not exclusively local in nature.

SEC. 512. NATIONAL TOBACCO CONTROL PROTOCOL.

(a) **REQUIREMENT-** Not later than 6 months after the date of enactment of this Act, each tobacco manufacturer to which this Act applies shall enter into a National Tobacco Control Protocol.

(b) **TERMS AND CONDITIONS-** The Protocol referred to in subsection (a) shall be--

(1) developed by the Secretary as a binding and enforceable contract that embodies the terms of this Act; and

(2) designed to be enforceable in Federal or State courts.

SEC. 513. NON-PARTICIPATING MANUFACTURERS.

(a) **IN GENERAL-** With respect to a manufacturer that elects not to enter into a consent decree under section 602, such manufacturer shall not be eligible to receive the liability protections under title VII.

(b) **IMPOSITION OF USER FEE-**

(1) **IN GENERAL-** Each manufacturer that elects not to enter into a consent decree under section 602 and not to become a signatory to the National Tobacco Control Protocol under section 603 shall be subject to an annual fee established under this subsection.

(2) **AMOUNT OF FEE-**

(A) **TOTAL-** The total amount of all fees established under this subsection for a year shall be equal to the amounts provided under paragraphs (1) and (8) of section 401(d) for the year.

(B) **PER MANUFACTURER-** The Secretary shall promulgate regulations for the purpose of assessing fees under this subsection and determining the amount of the fee to be assessed to each manufacturer.

(c) **SETTLEMENT RESERVE FUND-**

(1) **IN GENERAL-** Each manufacturer to which subsection (b)(1) applies shall annually deposit into an escrowed reserve fund an amount equal to 150 percent of the amount that such manufacturer would have paid under section 402 (except for that portion of the payments that would have been made available under paragraphs (1) and (8) of section 401(d)) for the year in which the manufacturer is making such deposit if the manufacturer had been a signatory to the National Tobacco Control Protocol under section 603.

(2) **USE-** Amounts contained in the reserve fund of a manufacturer under paragraph (1) shall be used solely for tobacco-related liability payments. The manufacturer may reclaim any amounts remaining in the fund (with interest) at the end of the 35-year period beginning on the date on which such fund is established.

Subtitle B--State Enforcement

SEC. 521. REQUIREMENT OF NO SALE TO MINORS LAW.**(a) RELEVANT LAW-**

(1) **IN GENERAL-** Subject to paragraph (2), for each calendar year, the Secretary may not make any payments to a State under section 403 unless the State involved has in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18 that meets the requirements of this section.

(2) **DELAYED APPLICABILITY FOR CERTAIN STATES-** In the case of a State whose legislature does not convene a regular session in fiscal year 1997, and in the case of a State whose legislature does not convene a regular session in fiscal year 1998, the requirement described in paragraph (1) as a condition of a receipt of payments under section 403 shall apply only for fiscal year 1999 and subsequent fiscal years.

(b) REQUIREMENTS- A State law described in subsection (a) shall comply with the following:

(1) **PROHIBITION ON SALE-** Such law shall provide that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product within the State to any individual under the age of 18 years.

(2) PURCHASE, RECEIPT OR POSSESSION-

(A) **IN GENERAL-** Such law shall provide that an individual under 18 years of age shall not purchase or attempt to purchase, receive or

attempt to receive, possess or attempt to possess, smoke or attempt to smoke, or otherwise use or consume or attempt to use or consume a tobacco product in a public place.

(B) **EMPLOYMENT-** Such law may permit an individual under the age of 18 to possess a tobacco product during regular working hours and in the course of such individual's employment if the tobacco product is not possessed for such individual's consumption.

(3) INSPECTIONS-

(A) **IN GENERAL-** Such law shall provide that the State Police of a State, or such local law enforcement authority duly designated by the State Police, shall enforce this law in a manner that can reasonably be expected to reduce the extent to which tobacco products are distributed to individuals under 18 years of age and shall, at least monthly, conduct random, unannounced inspections in accordance with regulations promulgated by the Secretary under this section to ensure compliance with this law.

(B) **CONDUCT-** Inspections under this paragraph shall be conducted in communities geographically and statistically representative of the entire State and the youth population of the State. Not less than 250 such inspections shall be conducted with respect to each 1,000,000 residents of the State.

SEC. 522. STATE REPORTING.

(a) **IN GENERAL**- Not later than 2 years after the date of enactment of this Act, and annually thereafter, the State shall prepare and submit to the Secretary a reduction in tobacco product usage report. Such report shall, except as provided in subsection (b)(3), be made available to the general public of the State.

(b) **CONTENTS**- A report submitted under subsection (a) shall include--

- (1) a detailed description of the enforcement activities undertaken by the State and the political subdivisions of the State concerning tobacco product usage laws for the year for which the report is being prepared;
- (2) a detailed description of the progress of the State in reducing the availability of tobacco products to individuals under 18 years of age, including the detailed statistical results of the compliance inspection required under section 621;
- (3) a detailed description of the methods used in such compliance inspection and in identifying outlets which were tested (the Secretary shall provide protections for the confidentiality of information provided under this paragraph);
- (4) a detailed description of the strategies that the State intends to utilize in the current and succeeding years to make further progress on reducing the availability of tobacco products to individuals under 18 years of age; and
- (5) the identity of a single State agency that is responsible for administering the requirements of title III in the State.

SEC. 523. REDUCTION IN STATE PAYMENTS.

(a) **ANNUAL DETERMINATION**- Beginning with respect to the fifth full fiscal year after the date of enactment of this Act, and each fiscal year thereafter the Secretary shall make a determination as to whether each State has pursued all reasonably available measures to enforce the law described in section 621.

(b) **PRESUMPTIVE FINDING**- The Secretary shall find presumptively that a State has not pursued all reasonably available measures to enforce the law described in section 621 if the Secretary determines that the State has not achieved the following compliance rate results based on the findings of the retail compliance inspections conducted under the State law:

- (1) With respect to each of the fifth and sixth fiscal years following the date of enactment, 75 percent compliance with State law.
- (2) With respect to each of the seventh through ninth fiscal years following the date of enactment, 85 percent compliance with State law.
- (3) With respect to the tenth and each subsequent fiscal year following the date of enactment, 90 percent compliance with State law.

(c) **AMOUNT OF REDUCTION**-

- (1) **IN GENERAL**- With respect to a State that the Secretary determines does not meet the compliance rates described in subsection (b), the Secretary may reduce the amount that the State may be eligible for under section 501. The amount of any such reduction shall not exceed an amount equal to 1 percent of the amount for which the State is

eligible for under section 501 for the fiscal year involved for each 1 percentage point by which the State's compliance performance is below the applicable compliance rate.

(2) LIMITATION- In no event shall the amount of any reduction under this section exceed an amount equal to 20 percent of the amount for which

the State is eligible for under section 501 for the fiscal year involved.

(3) REALLOTMENT- The Secretary shall reallocate any amounts withheld under this subsection to States with compliance rates that exceed the rates applicable under subsection (b) in amounts to be determined by the Secretary as appropriate to reward States with the highest compliance rates.

(d) REVIEW-

(1) PETITION FOR RELEASE- Not later than 90 days after the date on which a notice from the Secretary that the Secretary intends to make a reduction under subsection (c) is received, a State may petition the Secretary for a release and disbursement of such amount (referred to in this subsection as the 'withhold amount'). The State shall give prompt written notice of such petition to the State attorney general.

(2) ACTION BY SECRETARY-

(A) HOLDING AND INVESTING OF FUNDS- Upon receipt of a petition under paragraph (1), the Secretary shall designate the withhold amount as subject to a petition and invest such amount in interest-bearing securities of the United States subject to a final disposition of the petition.

(B) BASIS FOR DETERMINATION- In considering a petition received under paragraph (1), the Secretary shall consider--

(i) whether the State has acted in good faith and in full compliance with the provisions of this Act (and the amendments made by this Act) and any regulations promulgated in furtherance of this Act;

(ii) whether the State has pursued all reasonably available measures to achieve the compliance rates applicable under subsection (b) and the goals of this Act for reducing the underage use of tobacco products;

(iii) whether there is any evidence of any direct or indirect action taken by the State to undermine the achievement of the compliance rates and goals described in clause (ii); and

(iv) any other evidence determined appropriate by the Secretary.

(C) BURDEN- With respect to any action by the Secretary on a petition under paragraph (1), the burden shall be on the State to prove, by a preponderance of the evidence, that the State should be granted a release and disbursement under the petition.

(D) HEARING- The Secretary shall hold a hearing, with notice and an opportunity to be heard provided to the attorney general of the State and to manufacturers, prior to making any determination as to a petition under paragraph (1).

(E) **RELEASE OF FUNDS-** Upon a determination by the Secretary that the State has met the burden imposed under subparagraph (C) with respect to a petition, the Secretary shall disburse not to exceed 75 percent of the withhold amount (and any interest accrued on such amount) to the State. The Secretary may consider all relevant evidence in determining the amount to disburse to the State under this subparagraph.

(3) APPEALS-

(A) **IN GENERAL-** Any manufacturer or State attorney general aggrieved by a decision of the Secretary under paragraph (2) may, within 30 days of the date of such decision, seek judicial review of the decision in the United States Court of Appeals for the District of Columbia Circuit. The provisions of sections 701 through 706 of title 5, United States Code, shall apply to appeals filed under this paragraph.

(B) **LIMITATION-** No stay or other injunctive relief that has the effect of enjoining the withholding of amounts under this section shall be permitted during the pendency of an appeal filed under this paragraph.

(C) **FINALITY-** The decision of the Court of Appeals in an action under this paragraph shall be final.

TITLE VI--PROVISIONS RELATING TO TOBACCO-RELATED CIVIL ACTIONS

SEC. 601. GENERAL IMMUNITY.

(a) STATE ATTORNEY GENERAL ACTIONS-

(1) **PENDING ACTIONS-** Civil actions that have been commenced by a State or local governmental entity, or on behalf of such an entity, against a manufacturer, distributor, or retailer that is a

signatory to the National Tobacco Control Protocol under section 612, and that are pending on the date of enactment of this Act are terminated.

(2) **FUTURE ACTIONS-** A manufacturer, distributor or retailer that is a signatory to the National Tobacco Control Protocol under section 612 shall be immune from any civil action commenced after the date of enactment of this Act by a Federal, State, or local governmental entity, or on behalf of such an entity, for all claims arising from the use of a tobacco product.

(b) OTHER ACTIONS-

(1) CLASS ACTIONS-

(A) **PENDING ACTIONS-** Class actions for claims arising from the use of a tobacco product that are pending against a manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612, are terminated.

(B) **FUTURE ACTIONS-** A manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612 shall be

immune from any class action commenced after the date of enactment of this Act for all claims arising from the use of a tobacco product.

(2) ADDICTION AND DEPENDENCE CLAIMS-

(A) PENDING ACTIONS- Any civil action for claims based on addition to or dependence on a tobacco product that are pending against a manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612, are terminated.

(B) FUTURE ACTIONS- A manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612 shall be immune from any civil action commenced after the date of enactment of this Act for all claims based on addition to or dependence on a tobacco product.

(c) PRESERVATION- All personal injury claims arising from the use of a tobacco product by an individual shall be preserved.

SEC. 602. CIVIL LIABILITY FOR PAST CONDUCT.

(a) APPLICATION- The provisions of this section shall apply to all civil actions permitted under section 701 for relief arising from the conduct of a manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612 that occurred prior to the date of enactment of this Act.

(b) PUNITIVE DAMAGES PROHIBITED- No punitive damages shall be awarded in any claim described in subsection (a).

(c) INDIVIDUAL TRIALS- No class action suits, joinder of parties, aggregation of claims, consolidation of actions, extrapolations, or other devices to resolve cases other than on the basis of individual actions shall be permitted without the consent of the defendant. Any defendant, in an action that involves a violation of this subsection, may remove such action to an appropriate Federal court.

(d) JOINT SHARING AGREEMENT- As part of the National Tobacco Control Protocol under section 612, all signatories shall agree to the joint sharing of any civil liability for actions for damages arising from the use of tobacco products. Such signatories shall not be jointly and severally liable for damages involving nonsignatories. Actions involving both signatories and nonsignatories shall be severed.

(e) PERMISSIBLE PARTIES-

(1) PLAINTIFFS- The following individuals may be plaintiffs in a civil action to which this section applies:

(A) Individuals bringing claims, or claims derivative of such claims, on their own behalf for a tobacco-related injury, or the heirs of such individuals.

(B) Third-party payors for claims not based on subrogation that were pending on June 9, 1997.

(C) Third-party payors for claims based on subrogation of individual claims permitted under subparagraph (A).

(2) **DEFENDANTS-** This section shall apply only to actions brought against a signatory of the National Tobacco Control Protocol under section 612, a successor or assign of such a signatory, any future fraudulent transferees, or any entity for suit designated to survive a defunct signatory. Such signatories shall be vicariously liable for the actions of their agents.

(f) **REMOVAL-** Except as provided in subsection (c), there shall be no removal of a action to which this section applies.

(g) **DISCOVERY-** The development, after the date of enactment of this Act, of any tobacco product that reduces the risk of injury or illness to a user shall not be admissible or discoverable.

(h) **CAPS ON SETTLEMENTS-**

(1) **AGGREGATE ANNUAL CAP-** With respect to a calendar year, the aggregate amount of all tobacco claims judgments or settlements to which this section applies, that the signatories of the National Tobacco Control Protocol under section 612 shall be required to pay, shall not exceed an amount equal to 33 percent of the annual payment required under section 402 for the year involved.

(2) **PAYMENT OF EXCESS-** If the amount of the judgments and settlements described in paragraph (1) exceed an amount equal to 33 percent of the annual payment required under section 402 for the year involved, such excess amount shall be paid in the following year.

(3) **EFFECT OF SETTLEMENT-** The signatories described in paragraph (1) shall receive a credit, to be applied against the amount owed by such signatories to the National Tobacco Settlement Trust Fund for the year involved, in an amount equal to 80 percent of the aggregate amounts paid under judgments or settlements of tobacco-related claims to which this section applies for such year.

(4) **INDIVIDUAL CAP-** With respect to an action to which this section applies, any amount awarded in excess of \$1,000,000 may be paid in the year following the year in which the judgment or settlement was entered, except that this paragraph shall not apply if all other awards under judgments or settlements entered in the first year can be paid without exceeding the aggregate annual cap under paragraph (1). Such excess amount shall carry over from year to year with no payments in any single year exceeding \$1,000,000 and no interest accruing on such amounts until such time as the annual aggregate cap is not exceeded.

(5) **Unused portion of credit-**

(i) **DEFENSE COSTS-** The signatories of the National Tobacco Control Protocol under section 612 shall be responsible for the payment of all attorneys' fees and other costs associated with being a defendant in an action to which this section applies.

SEC. 603. CIVIL LIABILITY FOR FUTURE CONDUCT.

(a) **APPLICATION-** The provisions of this section shall apply to all civil actions permitted under section 701 for relief arising from the conduct of a manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612 that occurs after the date of enactment of this Act.

(b) **GENERAL PROVISIONS-** The provisions of subsections (c) and (e) through (i) of section 702 shall apply to actions under this section.

(c) **THIRD-PARTY PAYOR CLAIMS-** Third-party payor claims that are not based on subrogation shall not be commenced under this section.

SEC. 604. NON-PARTICIPATING MANUFACTURERS.

The provisions of this title shall not apply to any manufacturer, distributor, or retailer that is not a signatory to the National Tobacco Control Protocol under section 612.

TITLE VII--PUBLIC DISCLOSURE OF HEALTH RESEARCH

SEC. 701. PURPOSE.

It is the purpose of this title to provide for the disclosure of previously nonpublic or confidential documents by manufacturers of tobacco products, including the results of internal health research, and to provide for a procedure to settle claims of attorney-client privilege, work product, or trade secrets with respect to such documents.

SEC. 702. NATIONAL TOBACCO DOCUMENT DEPOSITORY.

(a) **ESTABLISHMENT-** To be eligible to receive the protections provided under title VII, manufacturers of tobacco products, acting in conjunction with the Tobacco Institute and the Council for Tobacco Research, U.S.A. (prior to the termination of such entities under section 155), shall, not later than 180 days after the date of enactment of this Act, establish and maintain a National Tobacco Document Depository (in this title referred to as the 'Depository'). Such Depository shall be located in the Washington, D.C. area and be open to the public.

(b) **USE OF DEPOSITORY-** The Depository shall be maintained in a manner that permits the Depository to be used as a resource for litigants, public health groups, and any other individuals who have an interest in the corporate records and research of the manufacturers concerning smoking and health, addiction or nicotine dependency, safer or less hazardous cigarettes, and underage tobacco use and marketing.

(c) **CONTENTS-** The Depository shall include (and manufacturers and the Tobacco Institute and the Council for Tobacco Research, U.S.A. shall provide)--

(1) within 180 days of the date of enactment of this Act, all documents provided by such entities to plaintiffs in--

(A) civil or criminal actions brought by State attorneys general (including all documents selected by plaintiffs from the Guilford Repository of the United Kingdom);

(B) Philip Morris Companies Inc.'s defamation action against Capital Cities/American Broadcasting Company News;

(C) the Federal Trade Commission's investigation concerning Joe Camel and underage marketing;

(D) the Haines and Cippollone actions; and

(E) the Butler action in Mississippi;

(2) within 90 days after the date of enactment of this Act, any existing documents discussing or referring to health research, addiction or dependency, safer or less hazardous cigarettes, studies of the smoking habits of minors, and the relationship between advertising or promotion and youth smoking, that the entities described in subsection (a) have not completed producing as required in the actions described in paragraph (1);

(3) within 180 days of the date of enactment of this Act, all documents relating to indices (as defined by the court in the Minnesota Attorney General action) of documents relating to smoking and health, including all indices identified by the manufacturers in the Washington, Texas, and Minnesota Attorney General actions;

(4) upon the settlement of any action referred to in this subsection, and after a good-faith, de novo, document-by-document review of all documents previously withheld from production in any actions on the grounds of attorney-client privilege, all documents determined to be outside of the scope of the privilege;

(5) all existing or future documents relating to original laboratory research concerning the health or safety of tobacco products, including all laboratory research results relating to methods used to make tobacco products less hazardous to consumers;

(6) a comprehensive new attorney-client privilege log of all documents, itemized in sufficient detail so as to enable any interested individual to determine whether the individual will challenge the claim of privilege, that the entities described in subsection (a) (based on the de novo review of such documents by such entities) claim are protected from disclosure under the attorney-client privilege;

(7) all existing or future documents relating to studies of the smoking habits of minors or documents referring to any relationship between advertising and promotion and underage smoking; and

(8) all other documents determined appropriate under regulations promulgated by the Secretary.

(d) DISPUTE RESOLUTION PANEL-

(1) ESTABLISHMENT- The Judicial Conference of the United States shall establish a Tobacco Documents Dispute Resolution Panel, to be composed of three Federal judges to be appointed by the Conference, to resolve all disputes involving claims of attorney-client, work product, or trade secrets privilege with respect to documents required to be deposited into the Depository under subsection (c) that may be brought by Federal, State, or local governmental officials or the public or asserted in any action by a manufacturer.

(2) BASIS FOR DETERMINATIONS- The determinations of the Panel established under paragraph (1) shall be based on--

(A) the American Bar Association/American Law Institute Model Rules or the principals of Federal law with respect to attorney-client or work product privilege;

and

(B) the Uniform Trade Secrets Act with respect to trade secrecy.

(3) DECISION- Any decision of the Panel established under paragraph (1) shall be final and binding upon all Federal and State courts.

(4) ASSESSING OF FEES- As part of a determination under this subsection, the Panel established under paragraph (1) shall determine whether a claimant of the privilege acted in good faith and had a factual and legal basis for asserting the claim. If the Panel determines that the claimant did not act in good faith, the Panel may assess costs against the claimant, including a reasonable attorneys' fee, and may apply such other sanctions as the Panel determines appropriate.

(5) ACCELERATED REVIEW- The Panel established under paragraph (1) shall establish procedures for the accelerated review of challenges to a claim of privilege. Such procedures shall include assurances that an individual filing a challenge to such a claim need not make a prima facie showing of any kind as a prerequisite to an in camera review of the documents at issue.

(6) SPECIAL MASTERS- The Panel established under paragraph (1) may appoint Special Masters in accordance with Rule 53 of the Federal Rules of Civil Procedure. The cost relating to any Special

Master shall be assessed to the manufacturers as part of a fee process to be established under regulations promulgated by the Secretary.

(e) OTHER PROVISIONS-

(1) NO WAIVER OF PRIVILEGE- Compliance with this section by the entities described in subsection (a) shall not be deemed to be a waiver on behalf of such entities of any applicable privilege or protection.

(2) AVOIDANCE OF DESTRUCTION- In establishing the Depository, procedures shall be implemented to protect against the destruction of documents.

(3) DEEMED PRODUCED- Any documents contained in the Depository shall be deemed to have been produced for purposes of any tobacco-related litigation in the United States.

(f) DOCUMENTS- For purposes of this section, the term 'documents' shall include any paper documents that may be printed using data that is contained in computer files.

TITLE VIII--ASSISTANCE TO TOBACCO GROWERS AND COMMUNITIES

SEC. 801. SHORT TITLE.

This title may be cited as the 'Long-Term Economic Assistance for Farmers Act' or the 'LEAF Act'.

SEC. 802. DEFINITIONS.

In this title:

(1) **ACTIVE TOBACCO PRODUCER**- The term `active tobacco producer' means a quota holder, quota lessee, or quota tenant.

(2) **QUOTA HOLDER**- The term `quota holder' means a producer that owns a farm for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1994, 1995, or 1996 crop years.

(3) **QUOTA LESSEE**- The term `quota lessee' means--

(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1994, 1995, or 1996 crop years; or

(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1994, 1995, or 1996 crop years.

(4) **QUOTA TENANT**- The term `quota tenant' means a producer who--

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1994, 1995, or 1996 crop years; and

(B) is not a quota holder or quota lessee.

(5) **SECRETARY**- The term `Secretary' means--

(A) in titles I and II, the Secretary of Agriculture; and

(B) in section 301, the Secretary of Labor.

(6) **TOBACCO PRODUCT IMPORTER**- The term `tobacco product importer' has the meaning given the term `importer' in section 5702 of the Internal Revenue Code of 1986.

(7) **TOBACCO PRODUCT MANUFACTURER**-

(A) **IN GENERAL**- The term `tobacco product manufacturer' has the meaning given the term `manufacturer of tobacco products' in section 5702 of the Internal Revenue Code of 1986.

(B) **EXCLUSION**- The term `tobacco product manufacturer' does not include a person that manufactures cigars or pipe tobacco.

(8) **TRUST FUND**- The term `Trust Fund' means the Tobacco Community Revitalization Trust Fund established under section 101.

Subtitle A--Tobacco Community Revitalization Trust Fund

SEC. 811. ESTABLISHMENT OF TRUST FUND.

(a) **IN GENERAL-** There is established in the Treasury of the United States a trust fund to be known as the 'Tobacco Community Revitalization Trust Fund', consisting of such amounts as may be appropriated or credited to the Trust Fund. The Trust Fund shall be administered by the Secretary.

(b) **TRANSFERS TO TRUST FUND-** There are appropriated and transferred to the Trust Fund for each fiscal year--

(1) amounts contributed by tobacco product manufacturers and tobacco product importers under section 102; and

(2) amounts made available to the Trust Fund out of funds allocated through national tobacco settlement legislation.

(c) **REPAYABLE ADVANCES-**

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

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

(3) **RATE OF INTEREST-** Interest on an advance made under this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) that is equal to the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the anticipated period during which the advance will be outstanding.

(d) **EXPENDITURES FROM TRUST FUND-** Amounts in the Trust Fund shall be available for making expenditures after October 1, 1998, to meet those necessary obligations of the Federal Government that are authorized to be paid under--

(1) section 201 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed \$1,600,000,000 for any fiscal year except to the extent the payments are made in accordance with section 201(j);

(2) section 202 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;

(3) section 203 for tobacco community economic development grants, but not to exceed--

(A) \$400,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 202 for the fiscal year; and

(B) \$450,000,000 for each of fiscal year 2009 through 2023, less any amount required to be paid under section 202 during the fiscal year;

(4) section 301 for assistance provided under the tobacco worker transition program, but not to exceed \$50,000,000 for any fiscal year; and

(5) subpart 9 of part A of title IV of the Higher Education Act of 1965 for farmer opportunity grants, but not to exceed--

(A) \$42,500,000 for each of the academic years 1999-2000 through 2003-2004;

(B) \$50,000,000 for each of the academic years 2004-2005 through 2008-2009;

(C) \$57,500,000 for each of the academic years 2009-2010 through 2013-2014;

(D) \$65,000,000 for each of the academic years 2014-2015 through 2018-2019; and

(E) \$72,500,000 for each of the academic years 2019-2020 through 2023-2024.

(e) BUDGETARY TREATMENT- This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.

SEC. 812. CONTRIBUTIONS BY TOBACCO PRODUCT MANUFACTURERS AND IMPORTERS.

(a) DEFINITION OF MARKET SHARE- In this section, the term 'market share' means the ratio of--

(1) the tax liability of a tobacco product manufacturer or tobacco product importer (as defined in section 2) for a calendar year under section 5703 of the Internal Revenue Code of 1986; to

(2) the tax liability of all tobacco product manufacturers or tobacco product importers (as defined in section 2) for the calendar year under section 5703 of the Internal Revenue Code of 1986.

(b) DETERMINATIONS- Not later than September 30 of each fiscal year, the Secretary of the Treasury shall--

(1) determine--

(A) the market share of each tobacco product manufacturer or tobacco product importer during the most recent calendar year;

(B) the total amount of assessments payable for the subsequent fiscal year under subsection (c); and

(C) the amount of an assessment payable by the tobacco product manufacturer or tobacco product importer for the fiscal year under subsection (d); and

(2) notify each tobacco product manufacturer and tobacco product importer of the determinations made under paragraph (1) with respect to the manufacturer or importer.

(c) TOTAL AMOUNT OF ASSESSMENTS-

(1) **IN GENERAL-** The total amount of assessments payable by all tobacco product manufacturers and tobacco product importers into the Trust Fund for a fiscal year shall be equal to--

(A) the amount of the contribution to the Trust Fund for the fiscal year required under paragraph (2); less

(B) any amount made available during the preceding fiscal year to the Trust Fund out of funds allocated through national tobacco settlement legislation.

(2) **TRUST FUND CONTRIBUTIONS-** The amount of the contribution to the Trust Fund shall be--

(A) \$2,100,000,000 for each of fiscal years 1999 through 2008;

(B) \$500,000,000 for each of fiscal years 2009 through 2023; and

(C) for fiscal year 2024 and each subsequent fiscal year, the amount payable under section 202.

(d) **INDIVIDUAL AMOUNT OF ASSESSMENTS-** The amount of an assessment payable by each tobacco product manufacturer and tobacco product importer into the Trust Fund for a fiscal year shall be equal to the product obtained by multiplying--

(1) the total amount of assessments payable by all tobacco product manufacturers and tobacco product importers for the fiscal year under subsection (c); by

(2) the market share of the tobacco product manufacturer or tobacco product importer during the most recent calendar year determined under subsection (b)(1)(A).

Subtitle B--Agricultural Market Transition Assistance

SEC. 821. PAYMENTS FOR LOST TOBACCO QUOTA.

(a) **IN GENERAL-** Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota as a result of a decrease in demand for domestically produced tobacco.

(b) **ELIGIBILITY-** To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall--

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and

(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1996 marketing year--

(A) the producer was a quota holder and realized income from the production of

tobacco through--

- (i) the active production of tobacco;
- (ii) the lease and transfer of tobacco quota to another farm;
- (iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or
- (iv) the hiring of a quota tenant to produce tobacco;

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL-

(1) IN GENERAL- The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1994 through 1996 marketing years.

(2) QUOTA HOLDERS- The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm owned by the quota holder for the 1994 through 1996 marketing years.

(3) QUOTA LESSEES- The base quota level for a quota lessee shall be equal to--

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1994 through 1996 marketing years--

- (i) that was leased and transferred to a farm owned by the quota lessee; or
- (ii) for which the rights to produce the tobacco were rented to the quota lessee; less

(B) 25 percent of the average number of pounds of tobacco quota described in paragraph

(A) for which a quota tenant was the principal producer of the tobacco quota.

(4) QUOTA TENANTS- The base quota level for a quota tenant shall be equal to the sum of--

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1994 through 1996 marketing years--

- (i) that was owned by a quota holder; and
- (ii) for which the quota tenant was the principal producer of the tobacco on the farm; and

(B) 25 percent of the average number of pounds of tobacco quota for the 1994 through 1996 marketing years--

- (i)(I) that was leased and transferred to a farm owned by the quota lessee; or
- (II) for which the rights to produce the tobacco were rented to the quota lessee; and
- (ii) for which the quota tenant was the principal producer of the tobacco on the farm.

(5) **MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS-** For each kind of tobacco for which there is a marketing quota or allotment (on an acreage basis), the base quota level for each quota holder, quota lessee, or quota tenant shall be determined in accordance with this subsection (based on a poundage conversion) in an amount equal to the product obtained by multiplying--

(A) the average tobacco farm marketing quota or allotment for the 1994 through 1996 marketing years; by

(B) the average county yield per acre for the county in which the farm is located for the kind of tobacco for the marketing years.

(d) **PAYMENTS-** Except as otherwise provided in this section, during any marketing year in which the national marketing quota for a kind of tobacco is less than the average national marketing quota level for the kind of tobacco for the 1994 through 1996 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder, quota lessee, and quota tenant that is eligible under subsection (b) in an amount that is equal to the product obtained by multiplying--

(1) the percentage by which the national marketing quota for the kind of tobacco is less than the average national marketing quota level for the kind of tobacco for the 1994 through 1996 marketing years; by

(2) the base quota level for the quota holder, quota lessee, or quota tenant; by

(3) \$4 per pound.

(e) **LIFETIME LIMITATION ON PAYMENTS-** Except as otherwise provided in this section, the total amount of payments made under this section to a quota holder, quota lessee, or quota tenant during the lifetime of the holder, lessee, or tenant shall not exceed the product obtained by multiplying--

(1) the base quota level for the quota holder, quota lessee, or quota tenant; by

(2) \$8 per pound.

(f) **LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS-**

(1) **IN GENERAL-** Except as otherwise provided in this subsection, the total amount payable under this section for any marketing year shall not exceed \$1,600,000,000.

(2) **ACCELERATED PAYMENTS-** Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with subsection (j).

(3) **REDUCTIONS-** If the amount determined under subsection (d) for a marketing year exceeds the amount described in paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable to quota holders, quota lessees, and quota tenants under this section to ensure that the total amount of the payments for lost tobacco quota does not exceed the limitation established under paragraph (1).

(4) **ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA-** Subject to paragraph (1), if the Secretary makes a reduction in accordance with paragraph (3), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco for the marketing year.

(g) **SUBSEQUENT SALE AND TRANSFER OF QUOTA-** Effective beginning January 1, 1999, on the sale and transfer of a farm marketing quota under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314e(g))--

(1) the person who sold and transferred the quota shall have--

(A) the base quota level attributable to the person reduced by the base quota level attributable to the quota that is sold and transferred; and

(B) the lifetime limitation on payments established under subsection (e) attributable to the person reduced by the product obtained by multiplying--

(i) the base quota level attributable to the quota; by

(ii) \$8 per pound; and

(2) the person who acquired the quota shall have--

(A) the base quota level attributable to the person increased by the base quota level attributable to the quota that was sold and transferred; and

(B) the lifetime limitation on payments established under subsection (e) attributable to the person--

(i) increased by the product obtained by multiplying--

(I) the base quota level attributable to the quota; by

(II) \$8 per pound; but

(ii) decreased by any payments for lost tobacco quota previously made that are attributable to the quota that was sold and transferred.

(h) **SALE OR TRANSFER OF FARM-** On the sale or transfer of ownership of a farm that is owned by a quota holder, the base quota level established under subsection (c), the right to payments under subsection (d), and the lifetime limitation on payments established under subsection (e) shall transfer to the new owner of the farm to the same extent and in the same manner as those subsections applied to the previous quota holder.

(i) **DEATH OF QUOTA LESSEE OR QUOTA TENANT-** If a quota lessee or quota tenant

who is entitled to payments under this section dies and is survived by a spouse or 1 or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving dependents in equal shares.

(j) ACCELERATION OF PAYMENTS-

(1) IN GENERAL- On the occurrence of any of the events described in paragraph (2), the Secretary shall make an accelerated lump sum payment for lost tobacco quota to each quota holder, quota lessee, and quota tenant for any affected kind of tobacco in accordance with paragraph (3).

(2) TRIGGERING EVENTS- The Secretary shall make accelerated payments under paragraph (1) if after the date of enactment of this title--

(A) for 3 consecutive marketing years, the national marketing quota for a kind of tobacco is less than 50 percent of the national marketing quota for the kind of tobacco for the 1996 marketing year; or

(B) Congress repeals or makes ineffective, directly or indirectly, any provision of--

(i) section 316(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g));

(ii) section 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(g));

(iii) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(iv) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445-1); or

(v) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-2).

(3) AMOUNT- The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to--

(A) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under subsection (e); less

(B) any payments for lost tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in paragraph (2).

SEC. 822. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.

(a) IN GENERAL- The Secretary shall use such amounts as are necessary from the Trust Fund at the end of each fiscal year to reimburse the Secretary for--

(1) costs associated with the administration of programs established under this title and amendments made by this title;

(2) costs associated with the administration of the tobacco quota and price support

programs administered by the Secretary;

(3) costs to the Federal Government of carrying out crop insurance programs for tobacco;

(4) costs associated with all agricultural research, extension, or education activities associated with tobacco;

(5) costs associated with the administration of loan association and cooperative programs for tobacco producers, as approved by the Secretary; and

(6) any other costs incurred by the Department of Agriculture associated with the production of tobacco.

(b) LIMITATIONS- Amounts made available under subsection (a) may not be used--

(1) to provide direct benefits to quota holders, quota lessees, or quota tenants; or

(2) in a manner that results in a decrease, or an increase relative to other crops, in the amount of the crop insurance premiums assessed to active tobacco producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(c) DETERMINATIONS- Not later than September 30, 1998, and each fiscal year thereafter, the Secretary shall determine--

(1) the amount of costs described in subsection (a); and

(2) the amount that will be provided under this section as reimbursement for the costs.

SEC. 823. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

(a) AUTHORITY- The Secretary shall make grants to tobacco-growing States in accordance with this section to enable the States to carry out economic development initiatives in tobacco-growing communities.

(b) APPLICATION- To be eligible to receive payments under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including--

(1) a description of the activities that the State will carry out using amounts received under the grant;

(2) a designation of an appropriate State agency to administer amounts received under the grant; and

(3) a description of the steps to be taken to ensure that the funds are distributed in accordance with subsection (e).

(c) AMOUNT OF GRANT-

(1) IN GENERAL- From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the amounts available as the total income of the State derived from the production of tobacco during

the 1994 through 1996 marketing years (as determined under paragraph (2)) bears to the total income of all States derived from the production of tobacco during the 1994 through 1996 marketing years.

(2) TOBACCO INCOME- For the 1994 through 1996 marketing years, the Secretary shall determine the amount of income derived from the production of tobacco in each State and in all States.

(d) PAYMENTS-

(1) IN GENERAL- A State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section in an amount that is equal to its allotment under subsection (c).

(2) FORM OF PAYMENTS- The Secretary may make payments under this section to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) REALLOTMENTS- Any portion of the allotment of a State under subsection (c) that the Secretary determines will not be used to carry out this section in accordance with an approved State application required under subsection (b), shall be reallocated by the Secretary to other States in proportion to the original allotments to the other States.

(e) USE AND DISTRIBUTION OF FUNDS-

(1) IN GENERAL- Amounts received by a State under this section shall be used to carry out economic development activities, including--

(A) rural business enterprise activities described in subsections (c) and (e) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932);

(B) down payment loan assistance programs that are similar to the program described in section 310E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1935);

(C) activities designed to help create productive farm or off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural individuals to the economic and social development of tobacco communities;

(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies in tobacco

communities and that support the development of new industries or commercial ventures;

(E) activities by agricultural organizations that provide assistance directly to active tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;

(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities; and

(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343).

(2) TOBACCO-GROWING COUNTIES- Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of \$100,000 in income derived from the production of tobacco during 1 or more of the 1994 through 1996 marketing years.

(3) DISTRIBUTION-

(A) ECONOMIC DEVELOPMENT ACTIVITIES- Not less than 20 percent of the amounts received by a State under this section shall be used to carry out--

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES- Not less than 4 percent of the amounts received by a State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO-GROWING COUNTIES- To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to have in excess of \$100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying--

(i) the ratio that the tobacco production income in the county determined under paragraph (2) bears to the total tobacco production income for the State determined under subsection (c); by

(ii) 50 percent of the total amounts received by a State under this section during the 5-year period.

(f) PREFERENCES IN HIRING- A State may require recipients of funds under this section to provide a preference in employment to--

(1) an individual who--

(A) during the 1996 calendar year, was employed in the manufacture, processing, or warehousing of tobacco or tobacco products, or resided, in a county described in subsection (e)(2); and

(B) is eligible for assistance under the tobacco worker transition program established under section 301; or

(2) an individual who--

(A) during the 1996 marketing year, carried out tobacco quota or relevant tobacco production activities in a county described in subsection (e)(2);

(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and

(C) has successfully completed a course of study at an institution of higher education.

SEC. 824. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.

(a) PROGRAM REFERENDA- Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended--

(1) by striking '(c) Within thirty' and inserting the following:

'(c) REFERENDA ON QUOTAS-

'(1) IN GENERAL- Not later than 30'; and

(2) by adding at the end the following:

'(2) REFERENDA ON PROGRAM CHANGES-

'(A) IN GENERAL- In the case of any kind of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that kind of tobacco in a State, the Secretary shall conduct a statewide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.

'(B) APPROVAL OF PROPOSALS- If a majority of producers of the kind of tobacco in the State approve a proposal in a referendum conducted under subparagraph (A), the Secretary shall implement the proposal in a manner that applies to all producers and quota holders of that kind of tobacco in the State.'

(b) PURCHASE REQUIREMENTS- Section 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is amended--

(1) in subsection (c), by striking paragraph (1) and inserting the following:

'(1) 105 percent of the average market price for the kind of tobacco involved during the preceding marketing year; by'; and

(2) by striking subsection (d) and inserting the following:

'(d) USE OF PENALTY PAYMENTS- An amount equivalent to each penalty collected by the Secretary under this section shall be transmitted by the Secretary to the Secretary of the Treasury for deposit in the Tobacco Community Revitalization Trust Fund established under section 101 of the LEAF Act.'

(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT-

(1) IN GENERAL- Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445(g)) is amended by striking subsection (g).

(2) CONFORMING AMENDMENT- Section 422(c) of the Uruguay Round Agreements Act (Public Law 103-465; 7 U.S.C. 1445 note) is amended by striking 'section 106(g), 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445-1, or 1445-2)' and inserting 'section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2)'.

Subtitle C--Farmer and Worker Transition Assistance

SEC. 831. TOBACCO WORKER TRANSITION PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS-

(1) CRITERIA- A group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) shall be certified as eligible to apply for adjustment assistance under this section pursuant to a petition filed under subsection (b) if the Secretary of Labor determines that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and--

(A) the sales or production, or both, of such firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY- In paragraph (1)(B), the term 'contributed importantly' means a cause that is important but not necessarily more important than any other cause.

(3) REGULATIONS- The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE-

(1) FILING OF PETITIONS- A petition for certification of eligibility to apply for adjustment assistance under this section may be filed by a group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which such workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE- Upon receipt of a petition under paragraph (1), the Governor shall--

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition--

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1); and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons for the finding, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that

rapid response and basic readjustment services authorized under other Federal laws are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS-

(1) IN GENERAL- The Secretary, within 30 days after receiving a petition under subsection (b)(2)(B)(ii), shall determine whether the petition meets the criteria described in subsection (a)(1). Upon a determination that the petition meets such criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for the assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION- Upon the denial of a certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of other applicable assistance programs to determine if the workers may be certified under such other provisions.

(d) COMPREHENSIVE ASSISTANCE-

(1) IN GENERAL- Workers covered by a certification issued by the Secretary under subsection (c)(1) shall be provided with benefits and services described in paragraph (2) in the same manner and to the same extent as workers covered under a certification under subchapter A of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), except that the total amount of payments under this section for any fiscal year shall not exceed \$50,000,000.

(2) BENEFITS AND SERVICES- The benefits and services described in this paragraph are the following:

(A) Employment services of the type described in section 235 of the Trade Act of 1974 (19 U.S.C. 2295).

(B) Training described in section 236 of the Trade Act of 1974 (19 U.S.C. 2296), except that notwithstanding the provisions of section 236(a)(2)(A) of such Act, the total amount of payments for training under this section for any fiscal year shall not exceed \$25,000,000.

(C) Tobacco worker readjustment allowances, which shall be provided in the same manner as trade readjustment allowances are provided under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), except that--

(i) the provisions of sections 231(a)(5)(C) and 231(c) of such Act (19 U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances upon a finding that it is not feasible or appropriate

to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and

(ii) notwithstanding the provisions of section 233(b) of such Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of such Act (19 U.S.C. 2296(a)) by the later of--

(I) the last day of the 16th week of such worker's initial unemployment compensation benefit period; or

(II) the last day of the 6th week after the week in which the Secretary issues a certification covering such worker.

In cases of extenuating circumstances relating to enrollment of a worker in a training program under this section, the Secretary may extend the time for enrollment for a period of not to exceed 30 days.

(D) Job search allowances of the type described in section 237 of the Trade Act of 1974 (19 U.S.C. 2297).

(E) Relocation allowances of the type described in section 238 of the Trade Act of 1974 (19 U.S.C. 2298).

(e) **INELIGIBILITY OF INDIVIDUALS RECEIVING PAYMENTS FOR LOST TOBACCO QUOTA-** No benefits or services may be provided under this section to any individual who has received payments for lost tobacco quota under section 201.

(f) **FUNDING-** Of the amounts in the Trust Fund, the Secretary may use not to exceed \$50,000,000 for each of fiscal years 1999 through 2008 to provide assistance under this section.

(g) **EFFECTIVE DATE-** This section shall take effect on the date that is the later of--

(1) October 1, 1998; or

(2) the date on which legislation implementing the national tobacco settlement is enacted.

(h) **TERMINATION DATE-** No assistance, vouchers, allowances, or other payments may be provided under this section after the date that is the earlier of--

(1) the date that is 10 years after the effective date of this section under subsection (g); or

(2) the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by this section becomes effective.

SEC. 832. FARMER OPPORTUNITY GRANTS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

`Subpart 9--Farmer Opportunity Grants

`SEC. 420D. STATEMENT OF PURPOSE.

`It is the purpose of this subpart to assist in making available the benefits of postsecondary education to eligible students (determined in accordance with section 420F) in institutions of higher education by providing farmer opportunity grants to all eligible students.

`SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETERMINATIONS; APPLICATIONS.

`(a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION-

`(1) PROGRAM AUTHORITY- From amounts made available under section 101(d)(5) of the LEAF Act, the Secretary, during the period beginning July 1, 1999, and ending September 30, 2024, shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (determined in accordance with section 420F) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a farmer opportunity grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of such sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based upon an amount requested by the institution as needed to pay eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

`(2) CONSTRUCTION- Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

`(3) DESIGNATION- Grants made under this subpart shall be known as 'farmer opportunity grants'.

`(b) AMOUNT OF GRANTS-

`(1) AMOUNTS-

`(A) IN GENERAL- The amount of the grant for a student eligible under this subpart shall be--

`(i) \$1,700 for each of the academic years 1999-2000 through 2003-2004;

`(ii) \$2,000 for each of the academic years 2004-2005 through 2008-2009;

`(iii) \$2,300 for each of the academic years 2009-2010 through 2013-2014;

`(iv) \$2,600 for each of the academic years 2014-2015 through 2018-2019;
and

`(v) \$2,900 for each of the academic years 2019-2020 through 2023-2024.

`(B) PART-TIME RULE- In any case where a student attends an institution of

higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subparagraph, computed in accordance with this subpart. Such schedule of reductions shall be established by regulation and published in the Federal Register.

`(2) MAXIMUM- No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at such institution.

`(3) PROHIBITION- No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.

`(c) PERIOD OF ELIGIBILITY FOR GRANTS-

`(1) IN GENERAL- The period during which a student may receive grants shall be the period required for the completion of the first undergraduate

baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that any period during which the student is enrolled in a noncredit or remedial course of study as described in paragraph (2) shall not be counted for the purpose of this paragraph.

`(2) CONSTRUCTION- Nothing in this section shall be construed to--

`(A) exclude from eligibility courses of study that are noncredit or remedial in nature and that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills; and

`(B) exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

`(3) PROHIBITION- No student is entitled to receive farmer opportunity grant payments concurrently from more than 1 institution or from the Secretary and an institution.

`(d) APPLICATIONS FOR GRANTS-

`(1) IN GENERAL- The Secretary shall from time to time set dates by which students shall file applications for grants under this subpart. The filing of applications under this subpart shall be coordinated with the filing of applications under section 401(c).

`(2) INFORMATION AND ASSURANCES- Each student desiring a grant for any year shall file with the Secretary an application for the grant containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the Secretary's functions and responsibilities under this subpart.

`(e) DISTRIBUTION OF GRANTS TO STUDENTS- Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

`(f) INSUFFICIENT FUNDING- If, for any fiscal year, the funds made available to carry out this subpart from the Tobacco Community Revitalization Trust Fund are insufficient to satisfy fully all grants for students determined to be eligible under section 420F, the amount of the grant provided under subsection (b) shall be reduced on a pro rata basis among all eligible students.

`(g) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS- Any institution of higher education that enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of such agreement, to be a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of farmer opportunity grants shall not be considered to be individual grantees for purposes of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

`SEC. 420F. STUDENT ELIGIBILITY.

`(a) IN GENERAL- In order to receive any grant under this subpart, a student shall--

`(1) be a member of a tobacco farm family in accordance with subsection (b);

`(2) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which such student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with section 487, and not be enrolled in an elementary or secondary school;

`(3) if the student is presently enrolled at an institution of higher education, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with subsection (c);

`(4) not owe a refund on grants previously received at any institution of higher education under this title, or be in default on any loan from a student loan fund at any institution provided for in part D, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

`(5) file with the institution of higher education that the student intends to attend, or is attending, a document, that need not be notarized, but that shall include--

`(A) a statement of educational purpose stating that the money attributable to such grant will be used solely for expenses related to attendance or continued attendance at such institution; and

`(B) such student's social security number; and

`(6) be a citizen of the United States.

`(b) TOBACCO FARM FAMILIES-

`(1) IN GENERAL- For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1996 the student was--

`(A) an individual who--

`(i) is an active tobacco producer (as defined in section 2 of the LEAF Act);
or

`(ii) is otherwise actively engaged in the production of tobacco;

`(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A);

`(C) an individual--

`(i) who was a brother, sister, stepbrother, stepsister, son-in-law, or daughter-in-law of an individual described in subparagraph (A); and

`(ii) whose principal place of residence was the home of the individual described in subparagraph (A); or

`(D) an individual who was a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of an individual described in subparagraph (A).

`(2) ADMINISTRATION- On request, the Secretary of Agriculture shall provide to the Secretary such information as is necessary to carry out this subsection.

`(c) SATISFACTORY PROGRESS-

`(1) IN GENERAL- For the purpose of subsection (a)(3), a student is maintaining satisfactory progress if--

`(A) the institution at which the student is in attendance reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution; and

`(B) the student has at least a cumulative C average or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

`(2) SPECIAL RULE- Whenever a student fails to meet the eligibility requirements of subsection (a)(3) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(3) for a grant under this subpart.

`(3) WAIVER- Any institution of higher education at which the student is in attendance may waive paragraph (1) or (2) for undue hardship based on--

- `(A) the death of a relative of the student;
- `(B) the personal injury or illness of the student; or
- `(C) special circumstances as determined by the institution.

`(d) **STUDENTS WHO ARE NOT SECONDARY SCHOOL GRADUATES-** In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under this subpart, the student shall meet either 1 of the following standards:

`(1) **EXAMINATION-** The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that such student can benefit from the education or training being offered. Such examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

`(2) **DETERMINATION-** The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves such process. In determining whether to approve or disapprove such process, the Secretary shall take into account the effectiveness of such process in enabling students without secondary school diplomas or the recognized equivalent to benefit from the instruction offered by institutions utilizing such process, and shall also take into account the cultural diversity, economic circumstances, and

educational preparation of the populations served by the institutions.

`(e) **SPECIAL RULE FOR CORRESPONDENCE COURSES-** A student shall not be eligible to receive a grant under this subpart for a correspondence course unless such course is part of a program leading to an associate, bachelor, or graduate degree.

`(f) **COURSES OFFERED THROUGH TELECOMMUNICATIONS-**

`(1) **RELATION TO CORRESPONDENCE COURSES-** A student enrolled in a course of instruction at an eligible institution of higher education (other than an institute or school that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)(C))) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by such institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at such institution equals or exceeds 50 percent of such courses.

`(2) **RESTRICTION OR REDUCTIONS OF FINANCIAL AID-** A student's eligibility to receive a grant under this subpart may be reduced if a financial aid officer determines under the discretionary authority provided in section 479A that telecommunications instruction results in a substantially reduced cost of attendance to such student.

`(3) **DEFINITION-** For the purposes of this subsection, the term 'telecommunications' means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that such term does not include a course

that is delivered using video cassette or disc recordings at such institution and that is not delivered in person to other students of that institution.

`(g) STUDY ABROAD- Nothing in this subpart shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive a grant under this subpart, without regard to whether such study abroad program is required as part of the student's degree program.

`(h) VERIFICATION OF SOCIAL SECURITY NUMBER- The Secretary, in cooperation with the Commissioner of Social Security, shall verify any social security number provided by a student to an eligible institution under subsection (a)(5)(B) and shall enforce the following conditions:

`(1) PENDING VERIFICATION- Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this subpart because social security number verification is pending.

`(2) DENIAL OR TERMINATION- If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant under this subpart until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

`(3) CONSTRUCTION- Nothing in this subsection shall be construed to permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against--

`(A) any institution of higher education with respect to any error in a social security number, unless such error was a result of fraud on the part of the institution; or

`(B) any student with respect to any error in a social security number, unless such error was a result of fraud on the part of the student.'.

Subtitle D--Immunity

SEC. 841. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND WAREHOUSERS.

Notwithstanding any other provision of this title, an active tobacco producer, tobacco-related growers association, or tobacco warehouse owner or employee may not be subject to liability in any Federal or State court for any cause of action resulting from the failure of any tobacco product manufacturer, distributor, or retailer to comply with national tobacco settlement legislation.

TITLE IX--EFFECTIVE DATES AND OTHER PROVISIONS

SEC. 901. EFFECTIVE DATES.

(a) IN GENERAL- Except as provided in subsection (b), and as otherwise provided in this Act, the provisions of this Act shall take effect on the date of enactment of this Act.

(b) EXCEPTIONS- The following provisions shall become effective as follows:

(1) The retail tobacco product display provisions under subtitle A of title I shall be applicable to retailers on the date that is 9 months after the date of enactment of this Act.

(2) The provisions relating to the display of tobacco product signs and displays by retailers under subtitle A of title I shall be applicable to retailers on the date that is 5 months after the date of enactment of this Act.

(3) The provisions of subtitle A of title I relating to advertising shall be applicable on the date that is 9 months after the date of enactment of this Act.

(4) The labeling requirements of subtitle A of title I and of chapter 9 of the Federal Food, Drug, and Cosmetic Act (as added by section 143(3) of this Act) shall be applicable (as determined under regulations promulgated by the Secretary) with respect to--

(A) 1/3 of all tobacco product packages, on the date that is 90 days after the date of enactment of this Act;

(B) 1/3 of all tobacco product packages, on the date that is 120 days after the date of enactment of this Act; and

(C) 1/3 of all tobacco product packages, on the date that is 180 days after the date of enactment of this Act.

(5) The provisions of section 105 relating to the sponsorship of events shall be applicable on December 31, 1998.

(6) The provisions of section 121 shall be applicable on the date that is 3 months after the date of enactment of this Act.

(7) The provisions of section 122 relating to vending machines shall be applicable on the date that is 12 months after the date of enactment of this Act.

(8) The provisions of section 122 relating to minimum package size shall be applicable on the date that is 3 months after the date of enactment of this Act.

(9) The provisions of section 122 relating to vending machines shall be applicable on the date that is 12 months after the date of enactment of this Act.

(10) The provisions of section 122 relating to sampling shall be applicable on the date that is 3 months after the date of enactment of this Act.

(11) The provisions of section 909 of the Federal Food, Drug and Cosmetic Act (as added by section 143(3) of this Act) relating to good manufacturing practices shall be applicable on the date that is 24 months after the date of enactment of this Act or on a date determined appropriate by the Secretary.

(12) The provisions of subtitle F of title I relating to corporate compliance shall be applicable on the date that is 12 months after the date of enactment of this Act.

SEC. 902. NATIVE AMERICANS.

(a) **INDIAN COUNTRY-** The provisions of this Act (or an amendment made by this Act) shall apply to the manufacture, distribution, and sale of tobacco products within Indian country.

(b) **INDIAN TRIBES-** To the extent that an Indian tribe or tribal organization engages in the manufacture, distribution, or sale of tobacco products, the provisions of this Act (or an amendment made by this Act) shall apply to such tribe or organization.

(c) **PAYMENTS TO TRUST FUND-** Any Indian tribe or tribal organization that engages in the manufacture of tobacco products shall be subject to liability under section 402, or shall be considered a non-participating manufacturer for purposes of section 613, and shall be subject to surcharges under section 205.

(d) APPLICATION OF FDA REQUIREMENTS-

(1) **IN GENERAL-** The Secretary shall promulgate regulations to provide for the application of the requirements of the Food, Drug and Cosmetic Act to tobacco products manufactured, distributed, or sold within Indian country.

(2) **ELIGIBILITY FOR ASSISTANCE-** Under the regulations promulgated under paragraph (1), the Secretary may provide assistance to an Indian tribe or tribal organization in meeting and enforcing the requirements under such regulations if--

(A) the tribe or organization has a governing body that has powers and carries out duties that are similar to the powers and duties of State or local governments;

(B) the functions to be exercised through the use of such assistance relate to activities on lands within the jurisdiction of the tribe or organization; and

(C) the tribe or organization is reasonably expected to be capable of carrying out the functions required by the Secretary.

(e) RETAIL LICENSING REQUIREMENTS-

(1) **IN GENERAL-** The requirements of subtitle D of title I shall apply to retailers that sell tobacco products within Indian country.

(2) **SELF-REGULATION-** The Secretary shall promulgate regulations to permit the Indian tribe or tribal organization with jurisdiction over the lands involved to implement a tribal licensing program that is at least as strict as the program in operation in the State in which the land involved is located.

(3) **IMPLEMENTATION BY SECRETARY-** If the Secretary determines that the Indian tribe or tribal organization is not qualified to administer the requirements of subtitle D of title I, the Secretary shall implement such requirements on behalf of the tribe or organization or delegate such authority to the State involved.

(f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS-

(1) **IN GENERAL-** Except as provided in paragraph (2), an Indian tribe or tribal organization shall be considered a State for purposes of eligibility under title V.

(2) PUBLIC HEALTH PROGRAM-

(A) **IN GENERAL-** Each State that receives a payment under section 502 shall set aside an appropriate portion, as determined under regulations prescribed by the Secretary, of such payment for use by Indian tribes or tribal organizations within the State.

(B) **AMOUNT-** The amount of any funds under subparagraph (A) for which an Indian tribe or tribal organization is eligible shall be determined by the State based on the proportion of the registered members of the tribe involved as compared to the total population of all such registered members in the State.

(C) **USE-** Amounts provided to a tribe or organization under this paragraph shall be used as provided for in section 504 and in accordance with a plan submitted by the tribe or organization and approved by the Secretary as being in compliance with this Act.

(D) **REALLOTMENT-** Any amounts set aside and not expended under this paragraph shall be reallocated among other eligible tribes and organizations.

(g) OBLIGATION OF MANUFACTURERS-

(1) **PROHIBITION-** A manufacturer shall not engage in any activity within Indian country that is otherwise prohibited under this Act (or an amendment made by this Act).

(2) **LIMITATION ON SALE-** A manufacturer shall not sell or otherwise distribute a tobacco product for subsequent manufacture, distribution, or sale to an Indian tribe or tribal organization, or provide such products to a manufacturer, distributor, or retailer that is subject to the jurisdiction of a tribe or organization, except under the same terms and conditions as the manufacturer imposes on other manufacturers, distributors, or retailers.

(h) DEFINITIONS- In this section:

(1) **INDIAN COUNTRY-** The term 'Indian country' has the meaning given such term by section 1151 of title 18, United States Code.

(2) **INDIAN TRIBE-** The term 'Indian tribe' has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(3) **TRIBAL ORGANIZATION-** The term 'tribal organization' has the meaning given such term in section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 903. PREEMPTION.

(a) **GENERAL PREEMPTION-** Except as otherwise provided for in this section, nothing in this Act shall be construed as prohibiting a State from imposing requirements, prohibitions, penalties or other measures to further the purposes of this Act that are in addition to the requirements, prohibitions, or penalties required under this Act. To the extent not inconsistent with the purposes of this Act, State and local governments may impose additional tobacco product control measures to further restrict or limit the use of such products by minors.

(b) ENFORCEMENT- A State may not impose obligations or requirements relating to the enforcement of this Act in a manner that conflicts with the provisions of title VI.

(c) PUBLIC EXPOSURE TO SMOKE- Nothing in title III shall be construed to preempt or otherwise affect any other Federal, State or local law which provides greater protection from the health hazards of environmental tobacco smoke.

(d) TAXES- Nothing in this Act shall be construed to prohibit a State from imposing taxes on tobacco products or tobacco product manufacturers, distributors, or retailers.

(e) NATIVE AMERICANS- Except as provided in section 902, a State may not impose obligations or requirements relating to the application of this Act to Indian tribes and tribal organizations.

END

TOBACCO RECOUPMENT PROTECTION

- Legislation sponsored by Cong. Bilirakis and Sen. Graham would repeal the HCFA recoupment provision for state tobacco settlements. CBO scored this provision at \$1.7 billion over 5 years.
 - Governors have agreed on a mechanism to pay the offset. Each state with a tobacco settlement would pay a proportionate share to offset the \$1.7 billion cost. Payments must be made in Year 1 and Year 5.
 - A settling state's proportionate share, payable towards the offset, would be the same percentage as the state's percentage of total payments to all settling states from the tobacco industry over 25 years.
- ⇒ **For example:** To date, the tobacco industry has settled with 4 states for approximately \$38 billion over 25 years. One state's share over that period, is about \$11 billion or 29%. Thus, that state would be required to pay 29% of the offset in Year 1. CBO estimates the Year 1 offset amount at \$140 million. The 3 remaining settling states would pay their respective proportionate shares, based on this same formula. If additional states settled, the percentages would decrease.
- By year 5, any additional states that had settled with the industry, would be responsible for sharing the cost of the remaining \$1.560 billion offset. Their share would also be based on the state's percentage of total payments received from the tobacco industry.
 - States making payments in Year 1 would have that amount credited to their Year 5 liability but would still be required to pay any difference.
 - Governors are unanimous in their support for this payment mechanism and it is a top priority. A letter, in support of legislation that protects current and future state settlement funds from federal seizure, was delivered to Congressional leadership on September 23 -- fifty governors signed the letter. Every Attorney General signed a similar letter. (Both letters are attached along with a letter from NCSL).



September 23, 1998

The Honorable Newt Gingrich
Speaker
United States House of Representatives
Washington, D.C. 20515

The Honorable Richard Gephardt
Minority Leader
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker and Representative Gephardt:

The nation's Governors want to call your attention to their top priority issue— ensuring that state tobacco settlement funds are protected from seizure by the federal government. We believe that S.1471/H.R. 2938 would provide this needed protection and strongly urge you to pass this legislation before Congress adjourns.

State attorneys general filed lawsuits against the tobacco industry based on a variety of claims including consumer protection, fraud, racketeering, antitrust violations, and health care costs. Over forty states and territories have filed lawsuits with a goal to reduce youth smoking and improve the health of all our citizens. These lawsuits, brought without federal assistance, represent years of state effort and leadership.

We are committed to doing all we can to see language signed into law this year that will protect our state settlement funds and potential settlement funds from federal seizure. We seek your support in passing legislation that ensures that tobacco settlement dollars remain in the respective states, and would welcome the opportunity to work with you to achieve this goal.

Thank you for your assistance.

Sincerely,

Governor Thomas R. Carper
Chairman
State of Delaware

Governor Michael O. Leavitt
Vice Chairman/Lead Governor on Health
State of Utah



September 23, 1998

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Thomas A. Daschle
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Majority Leader and Senator Daschle:

The nation's Governors want to call your attention to their top priority issue—ensuring that state tobacco settlement funds are protected from seizure by the federal government. We believe that S.1471/H.R. 2938 would provide this needed protection and strongly urge you to pass this legislation before Congress adjourns.

State attorneys general filed lawsuits against the tobacco industry based on a variety of claims including consumer protection, fraud, racketeering, antitrust violations, and health care costs. Over forty states and territories have filed lawsuits with a goal to reduce youth smoking and improve the health of all our citizens. These lawsuits, brought without federal assistance, represent years of state effort and leadership.

We are committed to doing all we can to see language signed into law this year that will protect our state settlement funds and potential settlement funds from federal seizure. We seek your support in passing legislation that ensures that tobacco settlement dollars remain in the respective states, and would welcome the opportunity to work with you to achieve this goal.

Thank you for your assistance.

Sincerely,

Governor Thomas R. Carper
Chairman
State of Delaware

Governor Michael O. Leavitt
Vice Chairman/Lead Governor on Health
State of Utah



September 23, 1998

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

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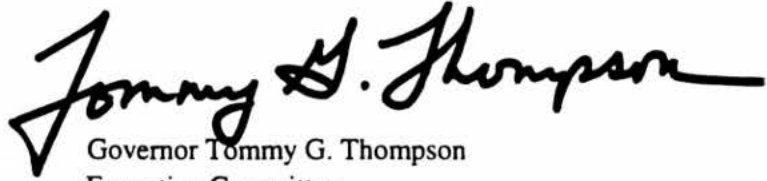
Sincerely,

Governor Thomas R. Carper
Chairman
State of Delaware

Governor Michael O. Leavitt
Vice Chairman/Lead Governor on Health
State of Utah



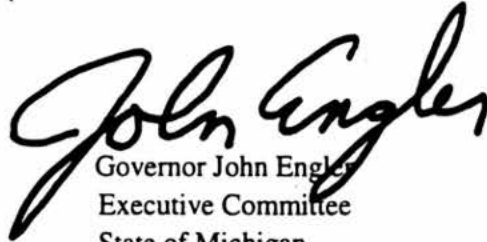
Governor Lawton Chiles
Co-Lead Governor on Health
State of Florida



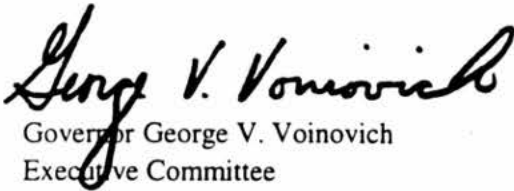
Governor Tommy G. Thompson
Executive Committee
State of Wisconsin



Governor Howard Dean, M.D.
Executive Committee
State of Vermont



Governor John Engler
Executive Committee
State of Michigan



Governor George V. Voinovich
Executive Committee
State of Ohio



Governor Bob Miller
Executive Committee
State of Nevada



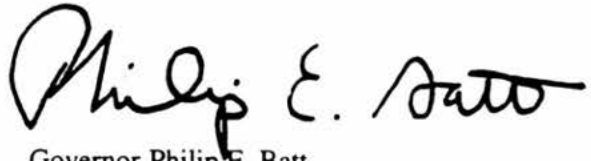
Governor Mike Huckabee
State of Arkansas



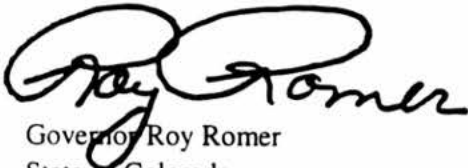
Governor Benjamin J. Cayetano
State of Hawaii



Governor Pete Wilson
State of California



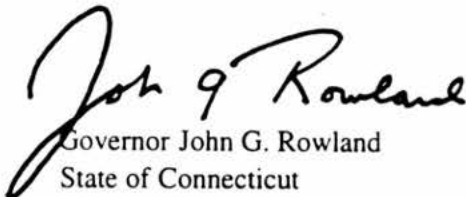
Governor Philip E. Batt
State of Idaho



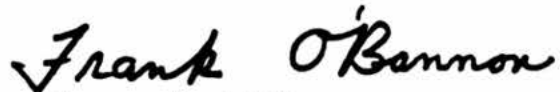
Governor Roy Romer
State of Colorado



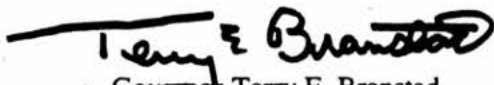
Governor Jim Edgar
State of Illinois

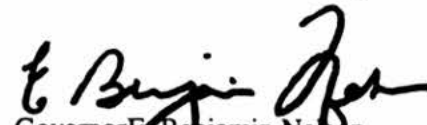


Governor John G. Rowland
State of Connecticut

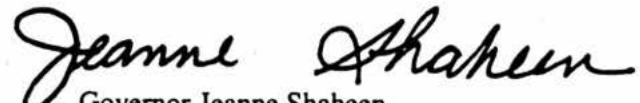


Governor Frank O'Bannon
State of Indiana

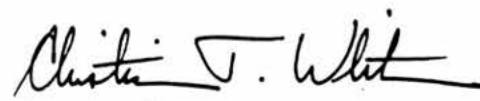

Governor Terry E. Branstad
State of Iowa

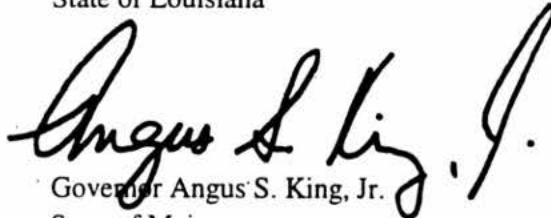

Governor E. Benjamin Nelson
State of Nebraska


Governor Bill Graves
State of Kansas

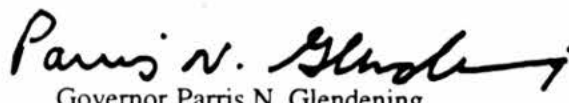

Governor Jeanne Shaheen
State of New Hampshire

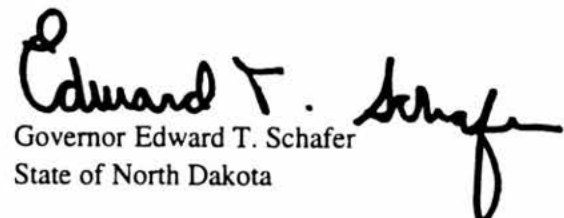

Governor Mike Foster
State of Louisiana


Governor Christine T. Whitman
State of New Jersey

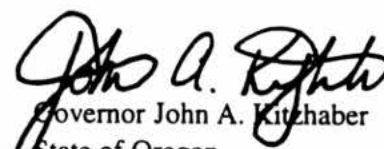

Governor Angus S. King, Jr.
State of Maine

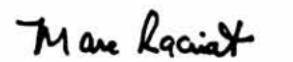

Governor George E. Pataki
State of New York


Governor Parris N. Glendening
State of Maryland


Governor Edward T. Schafer
State of North Dakota


Governor Argeo Paul Cellucci
State of Massachusetts


Governor John A. Kitzhaber
State of Oregon


Governor Marc Racicot
State of Montana

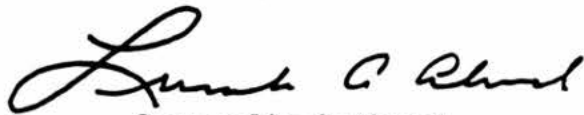

Governor Tom Ridge
State of Pennsylvania



Governor Pedro Rossello
Puerto Rico



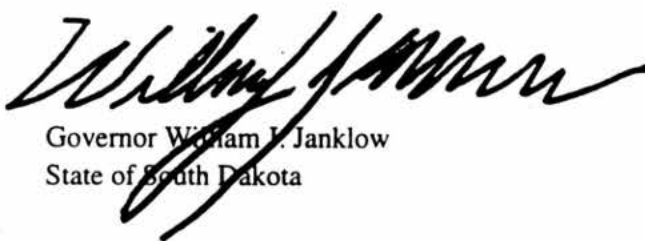
Governor James B. Hunt, Jr.
State of North Carolina



Governor Lincoln Almond
State of Rhode Island



Governor Zell Miller
State of Georgia



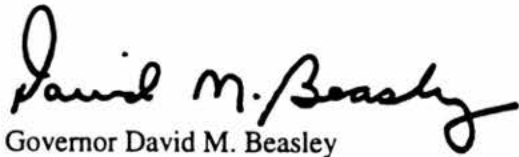
Governor William J. Janklow
State of South Dakota



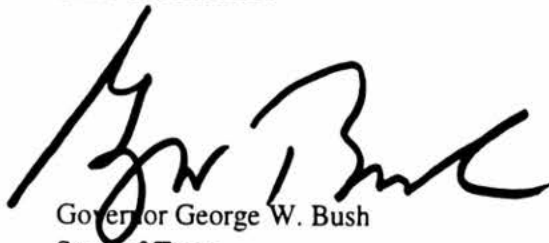
Governor Paul E. Patton
Executive Committee
State of Kentucky



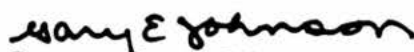
Governor Don Sundquist
State of Tennessee



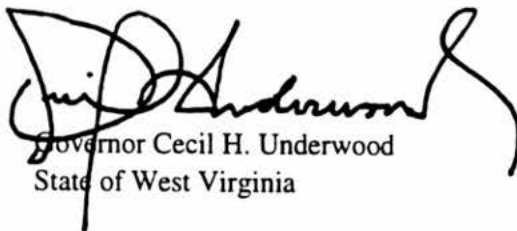
Governor David M. Beasley
Executive Committee
State of South Carolina



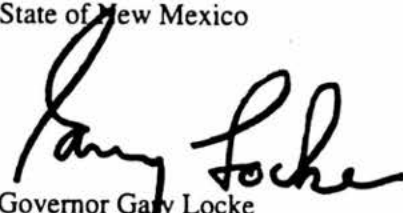
Governor George W. Bush
State of Texas



Governor Gary E. Johnson
State of New Mexico



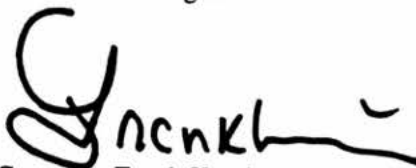
Governor Cecil H. Underwood
State of West Virginia



Governor Gary Locke
State of Washington



Governor Jim Geringer
State of Wyoming



Governor Frank Keating
Executive Committee
State of Oklahoma



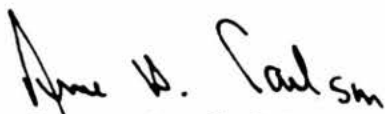
Governor Mel Carnahan
State of Missouri



Governor Carl T.C. Gutierrez
Guam



Governor Tony Knowles
State of Alaska



Governor Arne H. Carlson
State of Minnesota



Governor Jane Dee Hull
State of Arizona



Governor Tauese P.F. Sunia
American Samoa

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
750 FIRST STREET NE SUITE 1100
WASHINGTON, DC 20002
(202) 326-6053
(202) 408-6999

CHRISTINE T. MILLIKEN
*Executive Director
General Counsel*

September 17, 1998

PRESIDENT
MIKE MOORE
Attorney General of Mississippi

PRESIDENT-ELECT
CHRISTINE O. GREGOIRE
Attorney General of Washington

VICE PRESIDENT
ANDREW KETTERER
Attorney General of Maine

IMMEDIATE PAST PRESIDENT
JAMES E. DOYLE
Attorney General of Wisconsin

Majority Leader Trent Lott
U.S. Senate
Washington, D.C. 20510

Minority Leader Thomas Daschle
U.S. Senate
Washington, D.C. 20510

Speaker of the House Newt Gingrich
U.S. House of Representatives
Washington, D.C. 20515

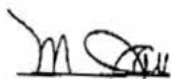
Minority Leader Richard Gephardt
U.S. House of Representatives
Washington, D.C. 20515

Dear Senators Lott and Daschle and Representatives Gingrich and Gephardt:

As state Attorneys General, we have communicated with Congressional leaders a number of times about youth smoking and tobacco litigation. Today we wish to reiterate our strong support for legislation that would protect state tobacco litigation or settlement recoveries from federal Medicaid recoupment claims.

Four states have already settled their lawsuits. A negotiating team is now seeking to reach a proposed settlement that would be made available to all of the other states and territories. However, whether the funds are paid through settlement or through court verdicts, the issue of Medicaid recoupment remains a constant concern for states.

A frequent misconception is that the state lawsuits are based entirely on recovering money through the Medicaid program. In reality, state lawsuits are based upon a variety of theories and measures of recovery. For example, many states are pursuing civil penalties under consumer protection statutes, treble damages under antitrust laws, or forfeiture of profits from sales of cigarettes to underage buyers. Some states have made no Medicaid-related claims at all.


M. Jane Bri
Attorney G

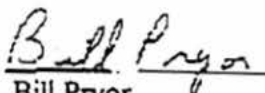
The vastly better solution would be for Congress to clarify that the Health Administration should not assert any claims against state tobacco recoveries. Insurance can be better utilized in each state to compensate for and to counter the effects of smoking.

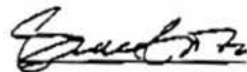
It is important that the legislation can be passed before Congress adjourns. I ask for your support for legislation like S.1471, H.R. 2938, or other mechanisms so that tobacco settlement payments stay in their respective states. Thank you for your


Robert A. J
Attorney G

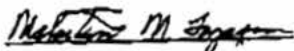
Sincerely,


Gus F. Dia
Acting Att


Bill Pryor
Attorney General of Alabama

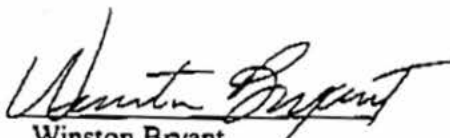

Bruce M. Botelho
Attorney General of

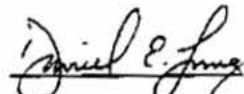

Alan G. L
Attorney G

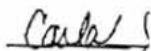

Toetagata Albert Mailo
Attorney General of American
Samoa

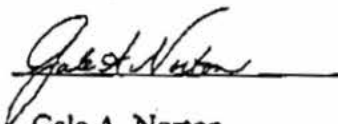

Grant Woods
Attorney General


Jeffrey A.
Attorney

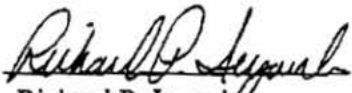

Winston Bryant
Attorney General of Arkansas


Daniel E. Lungren
Attorney General

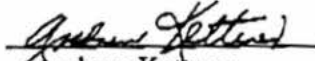

Carla J. S
Attorney


Gale A. Norton
Attorney General of Colorado

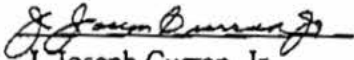

Richard Blumenthal
Attorney General



Richard P. Ieyoub
Attorney General of Louisiana



Andrew Ketterer
Attorney General of Maine



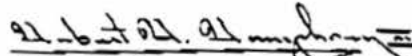
J. Joseph Curran, Jr.
Attorney General of Maryland



Scott Harshbarger
Attorney General of Massachusetts



Frank J. Kelley
Attorney General of Michigan



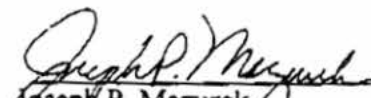
Hubert H. Humphrey
Attorney General of Minnesota



Mike Moore
Attorney General of Mississippi



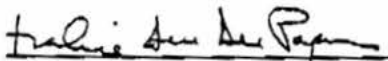
Jeremiah W. Nixon
Attorney General of Missouri



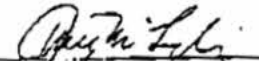
Joseph P. Mazurek
Attorney General of Montana



Don Stenberg
Attorney General of Nebraska



Frankie Sue Del Papa
Attorney General of Nevada



Philip T. McLaughlin
Attorney General of New Hampshire

Peter Verniero

Peter Verniero
Attorney General of New Jersey

Tom Udall

Tom Udall
Attorney General of New Mexico

Dennis C. Vacco

Dennis C. Vacco
Attorney General of New York

Michael F. Easley

Michael F. Easley
Attorney General of North Carolina

Heidi Heitkamp

Heidi Heitkamp
Attorney General of North Dakota

Maya B. Kara

Maya B. Kara
Attorney General of N. Mariana Isl.

Betty D. Montgomery

Betty D. Montgomery
Attorney General of Ohio

W. A. Drew Edmondson

W. A. Drew Edmondson
Attorney General of Oklahoma

Hardy Myers

Hardy Myers
Attorney General of Oregon

D. Michael Fisher

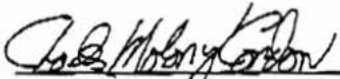
D. Michael Fisher
Attorney General of Pennsylvania

José A. Fuentes-Aguetón

José A. Fuentes-Aguetón
Attorney General of Puerto Rico

Jeffrey B. Pine

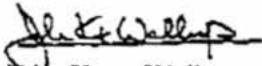
Jeffrey B. Pine
Attorney General of Rhode Island



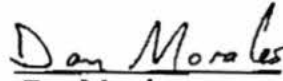
Charlie Condon
Attorney General of South Carolina



Mark Barnett
Attorney General of South Dakota



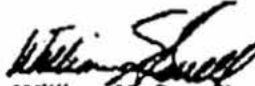
John Knox Walkup
Attorney General of Tennessee



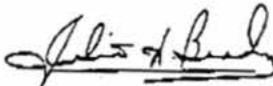
Dan Morales
Attorney General of Texas



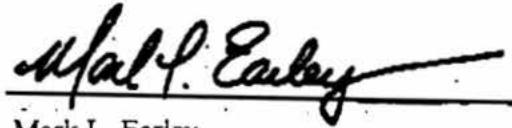
Jan Graham
Attorney General of Utah



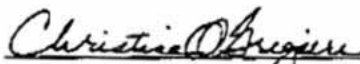
William H. Sorrell
Attorney General of Vermont



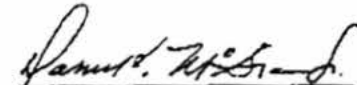
Julio A. Brady
Attorney General of Virgin Islands



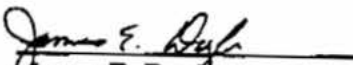
Mark L. Earley
Attorney General of Virginia



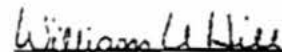
Christine O. Gregoire
Attorney General of Washington



Darrell V. McGraw Jr.
Attorney General of West Virginia



James E. Doyle
Attorney General of Wisconsin



William U. Hill
Attorney General of Wyoming



NATIONAL CONFERENCE OF STATE LEGISLATURES

444 NORTH CAPITOL STREET, N.W. SUITE 515 WASHINGTON, D.C. 20001
202-624-5400 FAX: 202-737-1069

DANIEL T. BLUE, JR.
SENIOR HOUSE MINORITY LEADER
NORTH CAROLINA
PRESIDENT, NCSL

THOMAS R. TEDCASTLE
DIRECTOR, BILL DRAFTING
AND GENERAL COUNSEL
FLORIDA
STAFF CHAIR, NCSL

WILLIAM POUND
EXECUTIVE DIRECTOR

September 29, 1998

Minority Leader Richard Gephardt
U.S. House of Representatives
H-204 Capitol Building
Washington, D.C. 20515

Dear Minority Leader Gephardt:

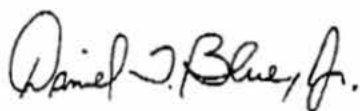
On behalf of the National Conference of State Legislatures (NCSL), I urge you to cosponsor H.R. 2938 and/or support the inclusion of the provisions of the bill in an appropriate legislative vehicle. Enactment of this legislation, sponsored by Representative Michael Bilirakis, is essential to ensure that states retain their tobacco settlement funds. Last fall, the U.S. Department of Health and Human Services sent a letter to state Medicaid Directors notifying them of its intention to "recoup" the federal match from funds state recover through suing tobacco manufacturers, using a provision in existing Medicaid law. **Without legislative action, HHS will be able to seize funds from the twenty-two states that settled with the Liggett Group, and all other states that receive funds as part of a settlement from either a state suit or from comprehensive federal settlement legislation.**

State governments throughout the country have invested enormous resources in tobacco-related suits and in crafting settlements with the industry. A number of state suits are scheduled to be heard over the next several months. Any funds provided to states through these pending suits or funds already agreed to through the Liggett Group settlement will be subject to recoupment unless H.R. 2938 is enacted. Certainly when the existing Medicaid statutory authority regarding the recovery of "overpayments" by third parties was enacted, the drafters could not have anticipated a circumstance as unusual or special as this. The Administrator of the Health Care Financing Administration (HCFA) stated in testimony before the House Commerce Committee that specific guidance from Congress was needed if HCFA is to exclude state tobacco settlement funds from the third party recovery provision in the Medicaid statute. We urge you to provide this guidance through the enactment of H.R. 2938.

Minority Leader Richard Gephardt
September 29, 1998
Page Two

Enclosed for your information is: (1) a fact sheet on the recoupment issue; (2) a copy of the letter sent from HCFA to State Medicaid Directors regarding recoupment; and (3) Nancy-Ann Min Deparle's testimony before the House Commerce Committee on December 8, 1997. We look forward to continuing to work with you to reduce youth smoking and access to tobacco products.

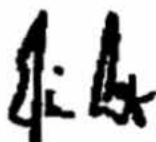
Sincerely,



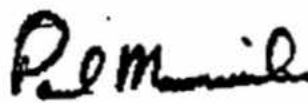
Daniel T. Blue, Jr.
Senior House Minority Leader
North Carolina House of Representatives
President, NCSL



Richard H. Finan
President of the Senate
Ohio
Immediate Past President, NCSL



Jim Costa
California State Senate
Vice President, NCSL



Paul S. Mannweiler
Minority Leader
Indiana House of Representatives
President-elect, NCSL

Enclosures (3)