

105TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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IN THE SENATE OF THE UNITED STATES

Mr. CONRAD (for himself, Mr. DASCHLE, Mr. LAUTENBERG, Mr. REED, Mr. LEAHY, Mr. DODD, Mr. BINGAMAN, Mr. DURBIN, \_\_\_\_\_

\_\_\_\_\_) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

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

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

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Healthy Kids Act”.

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*new version  
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- 4 (a) SHORT TITLE.—This Act may be cited as the
- 5 “Healthy Kids Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purposes.
- Sec. 4. Definitions.

## TITLE I—HEALTHY KIDS TRUST FUND

### Subtitle A—General Provisions

- Sec. 101. Establishment of Trust Fund.
- Sec. 102. Liability of tobacco product manufacturers.
- Sec. 103. Licensing of manufacturers.
- Sec. 104. Enforcement.

### Subtitle B—Payments

#### CHAPTER 1—TO STATES

- Sec. 111. Payments to States.

#### CHAPTER 2—FEDERAL HEALTH PROGRAMS

- Sec. 121. National Institutes of Health Trust Fund for Health Research.

#### CHAPTER 3—INVESTMENTS FOR CHILDREN

- Sec. 131. Improving child care and early childhood development.
- Sec. 132. Improving elementary education.
- Sec. 133. Increased enrollment of children with the medicaid and State children's health insurance programs.
- Sec. 134. Medicare cancer patient demonstration project; evaluation and report to Congress.

## TITLE II—FDA JURISDICTION OVER TOBACCO PRODUCTS

- Sec. 201. Reference.
- Sec. 202. Statement of general authority.
- Sec. 203. Treatment of tobacco products as drugs and devices.
- Sec. 204. Safety and efficacy standard and recall authority.
- Sec. 205. General health and safety regulation of tobacco products.

### SUBCHAPTER F—TOBACCO PRODUCTS

- “Sec. 571. Promulgation of regulations.
- “Sec. 572. Scientific Advisory Committee.
- “Sec. 573. Performance standards.
- “Sec. 574. Disclosure and reporting of tobacco and nontobacco ingredients and constituents.
- “Sec. 575. Tobacco product warnings, labeling and packaging.
- “Sec. 576. Preservation of State and local authority.
- “Sec. 577. Restrictions on youth access to tobacco products.
- “Sec. 578. Public disclosure of health research.
- “Sec. 579. Citizen suits.
- “Sec. 580. Agricultural producers.

- “Sec. 581. Authority of Secretary.  
Sec. 206. Repeals.  
Sec. 207. Authority of Federal Trade Commission.

TITLE III—YOUTH SMOKING REDUCTION TARGETS AND  
INCENTIVES TO REDUCE YOUTH SMOKING RATES

- Sec. 301. Purpose.  
Sec. 302. Child tobacco use surveys.  
Sec. 303. Reduction in underage tobacco product usage.  
Sec. 304. Noncompliance.  
Sec. 305. Miscellaneous provisions.

TITLE IV—TOBACCO TRANSITION ASSISTANCE FUND

- Sec. 401. Tobacco transition assistance fund.

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO  
TOBACCO SMOKE

- Sec. 501. Standards to reduce involuntary exposure to tobacco smoke.

TITLE VI—PUBLIC HEALTH AND OTHER PROGRAMS

Subtitle A—Research Programs

- Sec. 601. Tobacco-related research.  
Sec. 602. Research relating to patterns of smoking.  
Sec. 603. Surveillance and evaluation.

Subtitle B—Education and Prevention Programs

- Sec. 611. Grants for school- and community-based tobacco danger education programs.

Subtitle C—Miscellaneous Programs

- Sec. 621. Counter-advertising programs.  
Sec. 622. National Tobacco Cessation Program.  
Sec. 623. Assistance for those suffering from tobacco-related illnesses.  
Sec. 624. International tobacco control.  
Sec. 625. National Event Sponsorship Program.  
Sec. 626. Programs to reduce alcohol and illicit drug use by minors.

TITLE VII—LIABILITY PROTECTION; CONSENT DECREES;  
NATIONAL PROTOCOL

Subtitle A—Liability Protection and Attorney Fees

- Sec. 701. Dismissal of and limitations on civil actions.  
Sec. 702. Attorney's fees and expenses.

Subtitle B—Consent Decrees

- Sec. 711. Consent decrees.  
Sec. 712. Non-participating manufacturers.

Subtitle C—National Tobacco Control Protocol

CHAPTER 1—ESTABLISHMENT

Sec. 721. National Tobacco Control Protocol.

#### CHAPTER 2—TERMS AND CONDITIONS

Sec. 725. Application of chapter.

Sec. 726. Agreement to prohibit certain advertising.

Sec. 727. Consensual restrictions.

Sec. 728. Agreement on format and content requirements for labeling and advertising.

Sec. 729. Agreement to ban on nontobacco items and services, contests and games of chance, and sponsorship of events.

#### CHAPTER 3—ENFORCEMENT

Sec. 731. Federal enforcement of the protocol.

Sec. 732. State enforcement of the protocol.

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#### TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Prohibition on use of funds to facilitate the exportation or promotion of tobacco.

Sec. 802. Whistleblower protections.

Sec. 803. Prohibitions relating to tobacco products and children.

Sec. 804. Preservation of State and local authority.

Sec. 805. Severability.

#### TITLE IX—PROVISIONS RELATING TO NATIVE AMERICANS

Sec. 901. Provisions relating to Native Americans.

### 1 SEC. 2. FINDINGS.

2 Congress makes the following findings:

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

6 (2) The tobacco industry has targeted tobacco  
7 product marketing and promotional efforts toward  
8 minors as a source of replacement smokers. The in-  
9 dustry has also targeted minorities.

10 (3) Approximately 90 percent of smokers start  
11 by the time they are 18 years old. Half of all smok-  
12 ers start by age 14.

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

4           (5) Seventy percent of adult smokers would like  
5           to quit smoking, but the tobacco industry has ma-  
6           nipulated the level of nicotine in tobacco products  
7           and added ingredients to enhance the addictive ef-  
8           fects of nicotine to ensure that users of these prod-  
9           ucts remain addicted.

10          (6) Tobacco products cause cancer, heart dis-  
11          ease, emphysema, and other fatal illnesses. More  
12          than 400,000 Americans die each year of these to-  
13          bacco-related illnesses and conditions.

14          (7) Tobacco-related illnesses, medical conditions  
15          resulting from tobacco use, and lost wages and pro-  
16          ductivity cost the United States in excess of  
17          \$100,000,000,000 annually.

18          (8) Federal and State taxpayers spend tens of  
19          billions of dollars annually paying for the medicare,  
20          medicaid, and other Federal and State health pro-  
21          gram costs arising from tobacco-related illnesses and  
22          conditions.

23          (9) The tobacco industry has systematically in-  
24          voked and abused the attorney-client privilege to  
25          hide its attempts to mislead the American public

1       about the health risks associated with tobacco use,  
2       its manipulation of nicotine levels, and its efforts to  
3       lure underage users and minorities to its products.

4           (10) Nicotine is an addictive drug. The market-  
5       place for tobacco products is largely based on addic-  
6       tion.

7           (11) Worldwide, smoking kills 3,000,000 people  
8       each year. If current smoking patterns continue, to-  
9       bacco use will kill 10,000,000 people a year by 2025.

10          (12) Environmental tobacco smoke is respon-  
11       sible for 3,000 lung cancer deaths annually in Amer-  
12       ican nonsmokers. Environmental tobacco smoke also  
13       harms children's health.

14          (13) In 1995, the tobacco industry spent close  
15       to \$4,900,000,000 to attract new users, retain cur-  
16       rent users, increase current consumption, and gen-  
17       erate favorable long-term attitudes toward smoking  
18       and tobacco use.

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

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

1           (16) Through advertisements during and spon-  
2 sorship of sporting events, tobacco has become  
3 strongly associated with sports and has become por-  
4 trayed as an integral part of sports and the healthy  
5 lifestyle associated with rigorous sporting activity.

6           (17) Children are exposed to substantial and  
7 unavoidable tobacco advertising, that leads to favor-  
8 able beliefs about tobacco use, plays a role in leading  
9 young people to overestimate the prevalence of to-  
10 bacco use, and increases the number of young people  
11 who begin to use tobacco.

12           (18) Tobacco advertising increases the size of  
13 the tobacco market by increasing consumption of to-  
14 bacco products including increasing tobacco sales to  
15 young people.

16           (19) Children are more influenced by tobacco  
17 advertising than adults, they smoke the most adver-  
18 tised brands, and children as young as 3 to 6 can  
19 recognize a character associated with smoking at the  
20 same rate that they recognize cartoons and fast food  
21 characters.

22           (20) Tobacco company documents indicate that  
23 young people are an important and often crucial seg-  
24 ment of the tobacco market.



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

5           (22) Restrictions on advertising are necessary  
6           to prevent unrestricted tobacco advertising from un-  
7           dermining legislation prohibiting access to young  
8           people and providing for education about tobacco  
9           use.

10          (23) International experience shows that adver-  
11          tising regulations that are stringent and comprehen-  
12          sive have a greater impact on overall tobacco use  
13          and young people's use than weaker or less com-  
14          prehensive ones. Text only requirements, while not  
15          as stringent as a ban, will accomplish this purpose  
16          while preserving the informational function of adver-  
17          tising.

18 **SEC. 3. PURPOSES.**

19          The purposes of this Act are—

20          (1) to help American families dramatically re-  
21          duce the number of children illegally using tobacco  
22          products by—

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

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

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

5 (D) imposing penalties on manufacturers  
6 for failing to reach youth smoking rate reduc-  
7 tion targets;

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

10 (F) giving the Food and Drug Administra-  
11 tion the authority to keep tobacco products out  
12 of the hands of minors;

13 (2) to compensate taxpayers for their costs at-  
14 tributable to tobacco-related illnesses by reimbursing  
15 the medicaid and medicare programs and resolving  
16 the legal claims of Federal, State and local govern-  
17 ments for those costs that resulted from past mis-  
18 conduct by the tobacco industry;

19 (3) to improve the public health by reducing the  
20 number of adult users of tobacco products through  
21 approved cessation programs and limiting public ex-  
22 posure to environmental tobacco smoke;

23 (4) to provide assistance to tobacco farmers, to-  
24 bacco factory workers, and rural communities;

1 (5) to make tobacco industry documents regard-  
2 ing the health effects of tobacco, addiction, and the  
3 agricultural production, manufacturing, distribution,  
4 and marketing of tobacco products to youths avail-  
5 able to the public; and

6 (6) to enhance global anti-tobacco efforts.

7 **SEC. 4. DEFINITIONS.**

8 In this Act:

9 (1) BRAND.—The term “brand” means a vari-  
10 ety of a tobacco product distinguished by the tobacco  
11 used, tar content, nicotine content, flavoring used,  
12 size, filtration, or packaging.

13 (2) CIGAR.—The term “cigar” means any roll  
14 of tobacco wrapped in leaf tobacco or in any sub-  
15 stance containing tobacco (other than any roll of to-  
16 bacco which is a cigarette or cigarillo within the  
17 meaning of paragraph (3) or (4)).

18 (3) CIGARETTE.—The term “cigarette”  
19 means—

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

22 (B) any roll of tobacco wrapped in any  
23 substance containing tobacco which, because of  
24 its appearance, the type of tobacco used in the  
25 filler, or its packaging and labeling, is likely to

1           be offered to, or purchased by, consumers as a  
2           cigarette described in subparagraph (A).

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

9           (5) CIGARETTE TOBACCO.—The term “cigarette  
10          tobacco” means any product that consists of loose  
11          tobacco and is intended for use by persons in a ciga-  
12          rette. Unless otherwise stated, the requirements of  
13          this Act pertaining to cigarettes shall also apply to  
14          cigarette tobacco.

15          (6) DISTRIBUTOR.—The term “distributor”  
16          means any person who furthers the distribution of  
17          tobacco products, whether domestic or imported, at  
18          any point from the original place of manufacture to  
19          the person who sells or distributes the product to in-  
20          dividuals for personal consumption. Such term shall  
21          not include common carriers.

22          (7) LITTLE CIGAR.—The term “little cigar”  
23          means any roll of tobacco wrapped in leaf tobacco or  
24          any substance containing tobacco (other than any  
25          roll of tobacco which is a cigarette within the mean-

1       ing of subsection (1)) and as to which 1,000 units  
2       weigh not more than 3 pounds.

3           (8) MANUFACTURER.—The term “manufac-  
4       turer” means any person, including any repacker or  
5       relabeler, who manufactures, fabricates, assembles,  
6       processes, or labels a finished tobacco product.

7           (9) PACKAGE.—The term “package” means a  
8       pack, box, carton, or container of any kind in which  
9       tobacco products are offered for sale, sold, or other-  
10      wise distributed to consumers.

11          (10) PERSON.—The term “person” means an  
12      individual, partnership, corporation, parent corpora-  
13      tion, or any other business or legal entity or succes-  
14      sor in interest of any such person.

15          (11) PIPE TOBACCO.—The term “pipe tobacco”  
16      means any loose tobacco that, because of its appear-  
17      ance, type, packaging, or labeling, is likely to be of-  
18      fered to, or purchased by, consumers as a tobacco  
19      product to be smoked in a pipe.

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

24          (13) RETAILER.—The term “retailer” means  
25      any person who sells tobacco products to individuals

1 for personal consumption, or who operates a facility  
2 where vending machines or self-service displays are  
3 permitted under this Act.

4 (14) ROLL-YOUR-OWN TOBACCO.—The term  
5 “roll-your-own tobacco” means any tobacco which,  
6 because of its appearance, type, packaging, or label-  
7 ing, is suitable for use and likely to be offered to,  
8 or purchased by, consumers as tobacco for making  
9 cigarettes.

10 (15) SALE.—The term “sale” includes the sell-  
11 ing, providing samples of, or otherwise making to-  
12 bacco products available for personal consumption in  
13 any place within the scope of this Act.

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

17 (17) SMOKELESS TOBACCO.—The term “smoke-  
18 less tobacco” means any product that consists of  
19 cut, ground, powdered, or leaf tobacco that is in-  
20 tended to be placed in the oral or nasal cavity.

21 (18) STATE.—The term “State” includes the  
22 several States, the District of Columbia, the Com-  
23 monwealth of Puerto Rico, Guam, the Virgin Is-  
24 lands, American Samoa, the Northern Mariana Is-  
25 lands, and any other territory or possession of the

1 United States. Such term includes any political divi-  
2 sion of any State.

3 (19) TOBACCO.—The term “tobacco” means to-  
4 bacco in its unmanufactured form.

5 (20) TOBACCO PRODUCT.—The term “tobacco  
6 product” means any product made of or derived  
7 from tobacco leaf for human consumption, including,  
8 but not limited to, cigarettes, cigarillos, cigarette to-  
9 bacco, cigars, little cigars, pipe tobacco, and smoke-  
10 less tobacco, and roll-your-own tobacco.

11 (21) TRUST FUND.—Except as provided in sec-  
12 tion 121 and title IV, the term “Trust Fund” means  
13 the Health Enhancement and Lowered Tobacco  
14 Hazards for Young Kids Trust Fund established  
15 under section 101.

## 16 **TITLE I—HEALTHY KIDS TRUST** 17 **FUND**

### 18 **Subtitle A—General Provisions**

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

##### 20 (a) CREATION.—

21 (1) IN GENERAL.—There is established in the  
22 Treasury of the United States a trust fund to be  
23 known as the “Health Enhancement and Lowered  
24 Tobacco Hazards for Young Kids Trust Fund” (re-  
25 ferred to as the “HEALTHY Kids Trust Fund”),

1       consisting of such amounts as may be appropriated  
2       or credited to the Trust Fund.

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

6       (b) TRANSFERS.—There are hereby appropriated and  
7       transferred to the Trust Fund an amount equal to 75 per-  
8       cent of the—

9           (1) amounts received under the assessment  
10       made under section 102;

11          (2) amounts paid as fines or penalties, includ-  
12       ing interest thereon, under section 103; and

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

15       (c) REPAYABLE ADVANCES.—

16          (1) AUTHORIZATION.—There are authorized to  
17       be appropriated to the Trust Fund, as repayable ad-  
18       vances, such sums as may from time to time be nec-  
19       essary to make the expenditures described in sub-  
20       section (d).

21          (2) REPAYMENT WITH INTEREST.—Repayable  
22       advances made to the Trust Fund shall be repaid,  
23       and interest on such advances shall be paid, to the  
24       general fund of the Treasury when the Secretary of



1 the Treasury determined that moneys are available  
2 in the Trust Fund for such purposes.

3 (3) RATE OF INTEREST.—Interest on advances  
4 made pursuant to this subsection shall be at a rate  
5 determined by the Secretary of the Treasury (as of  
6 the close of the calendar month proceeding the  
7 month in which the advance is made) to be equal to  
8 the current average market yield on outstanding  
9 marketable obligations of the United States with re-  
10 maining period to maturity comparable to the antici-  
11 pated period during which the advance will be out-  
12 standing.

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

16 (1) 14.5 percent of such amounts shall be made  
17 available for payments to States as provided for  
18 under section 111.

19 (2) 17 percent of such amounts shall be made  
20 available for grants to the States for child care and  
21 early childhood development as provided for in sec-  
22 tion 131.

23 (3) 6 percent of such amounts shall be made  
24 available for grants to States for education as pro-  
25 vided for in section 132.

1           (4) 4 percent of such amounts shall be made  
2 available to carry out the outreach and increased en-  
3 rollment provisions under the amendments made by  
4 section 133 to the medicaid program under title XIX  
5 of the Social Security Act (42 U.S.C. 1396 et seq.)  
6 and the children's health insurance program under  
7 title XXI of such Act (42 U.S.C. 1397aa et seq.).

8           (5) 15.5 percent of such amounts shall be made  
9 available for public health programs, of which—

10           (A) \$300,000,000 shall be made available  
11 to the Secretary to carry out chapter IX of the  
12 Food Drug and Cosmetic Act (as added by sec-  
13 tion 204);

14           (B) \$200,000,000 shall be made available  
15 to the Indian Health Service to be used as pro-  
16 vided for in title IX; and

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

20           (6) 21 percent of such amounts shall be made  
21 available to the National Institutes of Health Trust  
22 Fund for Health Research for the conduct of re-  
23 search through the National Institutes of Health as  
24 provided for in section 121.

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

3           (A) 12 percent of such amounts shall be  
4       made available to the Tobacco Community Re-  
5       vitalization Trust Fund for each of the first 10  
6       fiscal years after the date of enactment of this  
7       Act;

8           (B) 4 percent of such amounts shall be  
9       made available to the Tobacco Community Re-  
10      vitalization Trust Fund for each of the 11th  
11      through 15th fiscal years after the date of en-  
12      actment of this Act; and

13          (C) 2 percent of such amounts shall be  
14      made available to the Tobacco Community Re-  
15      vitalization Trust Fund for each of the 16th  
16      through 25th fiscal years after the date of en-  
17      actment of this Act.

18          (8) For the Hospital Insurance Trust Fund—

19           (A) 4 percent of such amounts shall be  
20      made available to such Trust Fund for each of  
21      the first 10 fiscal years after the date of enact-  
22      ment of this Act, of which \$250,000,000 shall  
23      be made available to carry out section 134 in  
24      each of the 3 fiscal years described in such sec-  
25      tion;

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

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

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

12 (9) For reducing the public debt—

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

17 (B) 10 percent of such amounts shall be  
18 made available for such reduction in each of the  
19 11th through 15th fiscal years after the date of  
20 enactment of this Act;

21 (C) 11 percent of such amounts shall be  
22 made available for such reduction in each of the  
23 16th through 25th fiscal years after the date of  
24 enactment of this Act; and

1 (D) 12 percent of such amounts shall be  
2 made available for such reduction in each sub-  
3 sequent fiscal year.

4 (e) BUDGETARY TREATMENT AND DEFINITION.—

5 (1) TREATMENT.—The Office of Management  
6 and Budget shall not include any amounts made  
7 available under paragraphs (8) and (9) of subsection  
8 (d) in the estimates and reports required by sections  
9 252(b) and (254) of the Balanced Budget and  
10 Emergency Deficit Control Act of 1985 and the  
11 Congressional Budget Act of 1974.

12 (2) DEFINITION.—In subsection (d)(9), the  
13 term “public debt” means any obligation of the Fed-  
14 eral Government included in the gross public debt.

15 **SEC. 102. LIABILITY OF TOBACCO PRODUCT MANUFACTUR-**  
16 **ERS.**

17 (a) PAYMENTS.—

18 (1) INITIAL PAYMENT.—Not later than 90 days  
19 after the date of enactment of this Act, each manu-  
20 facturer shall pay to the Trust Fund an amount  
21 that bears the same ratio to \$15,000,000,000 as the  
22 average stock market capitalization of the tobacco  
23 manufacturer (as defined in paragraph (3)) bears to  
24 the average stock market capitalization of all to-  
25 bacco manufacturers for 1996.

1           (2) ANNUAL ASSESSMENTS AND COLLECTION.—

2           For each calendar year beginning with the first full  
3           calendar year following the year in which this Act is  
4           enacted, the Secretary shall assess each manufac-  
5           turer an amount determined under subsection (b).  
6           Such assessments shall be collected in a manner  
7           similar to the manner in which excise taxes are col-  
8           lected under chapter 52 of the Internal Revenue  
9           Code of 1986.

10           (3) AVERAGE STOCK MARKET CAPITALIZA-  
11           TION.—For purposes of this subsection, the average  
12           stock market capitalization of a manufacturer for a  
13           year shall be determined by the Secretary of the  
14           Treasury based on data submitted by manufacturers  
15           and other appropriate data. Such determinations  
16           shall be made regardless of whether the manufac-  
17           turer issues stock.

18           (b) ANNUAL ASSESSMENTS.—The Secretary shall as-  
19           sess each manufacturer (in accordance with regulations,  
20           relating to the timing and method of payment of assess-  
21           ments, to be promulgated by the Secretary of the Treas-  
22           ury) an amount in accordance with the following:

23           (1) SMALL CIGARETTES.—With respect to a  
24           manufacturer of cigarettes weighing not more than  
25           3 pounds per thousand, the assessment shall equal—

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

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

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

7 (2) LARGE CIGARETTES.—

8 (A) IN GENERAL.—With respect to a man-  
9 ufacturer of cigarettes weighing more than 3  
10 pounds per thousand, the assessment shall  
11 equal—

12 (i) for cigarettes removed during cal-  
13 endar year 1999, \$52.50 per thousand;

14 (ii) for cigarettes removed during cal-  
15 endar year 2000, \$105 per thousand; and

16 (iii) for cigarettes removed during cal-  
17 endar year 2001, \$157.50 per thousand.

18 (B) EXCEPTION.—On cigarettes more than  
19 6½ inches in length, at the rate prescribed for  
20 cigarettes weighing not more than 3 pounds per  
21 thousand, counting each 2¾ inches, or fraction  
22 thereof, of the length of each as one cigarette.

23 (3) SMALL CIGARS.—With respect to a manu-  
24 facturer of cigars weighing not more than 3 pounds  
25 per thousand, the assessment shall equal—

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

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

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

7 (4) LARGE CIGARS.—With respect to a manu-  
8 facturer of cigars weighing more than 3 pounds per  
9 thousand, the assessment shall equal—

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

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

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

22 (5) SNUFF.—With respect to a manufacturer of  
23 snuff (as such term is defined for purposes of chap-  
24 ter 52 of the Internal Revenue Code of 1986) the  
25 assessment shall equal—



1 (A) for snuff removed during calendar year  
2 1999, \$6.67 per pound (and a proportionate as-  
3 sessment at the like rate on all fractional parts  
4 of a pound);

5 (B) for snuff removed during calendar year  
6 2000, \$13.33 per pound (and a proportionate  
7 assessment at the like rate on all fractional  
8 parts of a pound); and

9 (C) for snuff removed during calendar year  
10 2001, \$20 per pound (and a proportionate as-  
11 sessment at the like rate on all fractional parts  
12 of a pound).

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

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

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

1 (C) for chewing tobacco removed during  
2 calendar year 2001, \$8 per pound (and a pro-  
3 portionate assessment at the like rate on all  
4 fractional parts of a pound).

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

9 (A) for pipe tobacco removed during cal-  
10 endar year 1999, \$5.33 per pound (and a pro-  
11 portionate assessment at the like rate on all  
12 fractional parts of a pound);

13 (B) for pipe tobacco removed during cal-  
14 endar year 2000, \$10.67 per pound (and a pro-  
15 portionate assessment at the like rate on all  
16 fractional parts of a pound); and

17 (C) for pipe tobacco removed during cal-  
18 endar year 2001, \$16.00 per pound (and a pro-  
19 portionate assessment at the like rate on all  
20 fractional parts of a pound).

21 (8) ROLL-YOUR-OWN TOBACCO.—With respect  
22 to a manufacturer of roll-your-own tobacco the as-  
23 sessment shall equal—

24 (A) for roll-your-own tobacco removed dur-  
25 ing calendar year 1999, \$5.71 per pound (and

1 a proportionate assessment at the like rate on  
2 all fractional parts of a pound);

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

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

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

17 (1) such dollar amount (or percentage), multi-  
18 plied by

19 (2) the greater of—

20 (A) the medical consumer price percentage  
21 increase for such calendar year as determined  
22 in the same manner as the adjustment is deter-  
23 mined under section 1(f)(3) of the Internal  
24 Revenue Code of 1986 for such calendar year  
25 by substituting “the second preceding calendar

1           year” for “calendar year 1992” in subpara-  
2           graph (B) thereof; or

3                   (B) 3 percent.

4       (d)   ASSESSMENTS   APPLICABLE   TO   FLOOR  
5 STOCKS.—

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

12                   (A) the assessment which would be im-  
13                   posed under subsection (b) on the product if the  
14                   product had been removed on such date, over

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

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

19                   (A) LIABILITY FOR ASSESSMENT.—A per-  
20                   son holding cigarettes on any assessment date,  
21                   to which any assessment imposed under para-  
22                   graph (1) applies shall be liable for such assess-  
23                   ment.

24                   (B) METHOD OF PAYMENT.—The assess-  
25                   ment imposed under paragraph (1) shall be

1           paid in such manner as the Secretary of the  
2           Treasury shall prescribe by regulations.

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

6           (3) ARTICLES IN FOREIGN TRADE ZONES.—  
7           Notwithstanding the Act of June 18, 1934 (48 Stat.  
8           998, 19 U.S.C. 81a) and any other provision of law,  
9           any product which is located in a foreign trade zone  
10          on any assessment date, shall be subject to the as-  
11          sessment imposed by paragraph (1) if—

12           (A) internal revenue taxes have been deter-  
13           mined, or customs duties liquidated, with re-  
14           spect to such product before such date; or

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

17           (4) ASSESSMENT DATE.—The term “assess-  
18           ment date” means January 1.

19           (e) NO TAX BENEFIT.—

20           (1) IN GENERAL.—The initial payment de-  
21           scribed in subsection (a)(1) shall not be considered  
22           to be an ordinary and necessary expense in carrying  
23           on a trade or business for purposes of the Internal  
24           Revenue Code of 1986 and shall not be tax deduct-  
25           ible.

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

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

8           (1) in subparagraph (F)(iii), by striking “or” at  
9       the end;

10          (2) in subparagraph (G), by striking the period  
11       and inserting “; or”; and

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

13               “(H) a payment, an assessment, or a pen-  
14       alty to be paid into the Health Enhancement  
15       and Lowered Tobacco Hazards for Young Kids  
16       Trust Fund under section 102 (or any other  
17       section) of the Healthy Kids Act.”.

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

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

1 (i) NONAPPLICATION TO CERTAIN MANUFACTUR-  
2 ERS.—

3 (1) IN GENERAL.—A manufacturer described in  
4 paragraph (2) shall be exempt from the require-  
5 ments of this section relating to—

6 (A) the payment of an initial payment  
7 under subsection (a)(1); and

8 (B) the payment of that portion of the an-  
9 nual assessments under this section that will be  
10 provided under paragraphs (1) through (4) of  
11 section 101(d) to States with which such manu-  
12 facturer has settled tobacco-related civil actions  
13 as of the date of enactment of this Act. For any  
14 such manufacturer, the Secretary shall deter-  
15 mine the percentage of the annual assessment  
16 of such manufacturer that would be paid to  
17 such States under such section and deduct such  
18 amount from the aggregate assessment due.

19 (2) MANUFACTURER.—A manufacturer de-  
20 scribed in this section is a manufacturer that has re-  
21 solved tobacco-related civil actions with more than  
22 25 States prior to January 1, 1998 through judicial  
23 consent decrees.

24 (3) LIMITATION.—The provisions of paragraph  
25 (1) shall apply only to assessments on cigarettes to

1 the extent that such cigarettes constitute less than  
2 3 percent of all cigarettes manufactured and distrib-  
3 uted for consumers in any year.

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

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

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

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

15 (2) to be eligible to receive the protections pro-  
16 vided under subtitle A of title VII.

17 (c) NONPAYMENT OF ASSESSMENTS.—A manufac-  
18 turer or importer shall not be eligible to receive a license  
19 under this section if such manufacturer or importer has  
20 failed to pay the assessment required under section 102.

21 (d) REVOCATION AND SUSPENSION.—The Secretary  
22 shall promulgate regulations to provide for the enforce-  
23 ment of the program established under section (a). Such  
24 regulations shall provide for the revocation or suspension  
25 of a license for nonpayment of required assessments.



1 **SEC. 104. ENFORCEMENT.**

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

7 (b) AMOUNT OF PENALTY.—The amount of the pen-  
8 alty imposed by subsection (a) on any failure with respect  
9 to a manufacturer shall be established by the Secretary  
10 of the Treasury for each day during the noncompliance  
11 period, except that no such penalty shall be less than  
12 \$25,000 plus interest.

13 (c) NONCOMPLIANCE PERIOD.—For purposes of this  
14 section, the term “noncompliance period” means, with re-  
15 spect to any failure to pay an assessment under section  
16 102, the period—

17 (1) beginning on the due date for such pay-  
18 ment; and

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

21 **Subtitle B—Payments**

22 **CHAPTER 1—TO STATES**

23 **SEC. 111. PAYMENTS TO STATES.**

24 (a) AVAILABILITY OF FUNDS.—

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

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

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

13 (b) REIMBURSEMENT.—

(1) IN GENERAL.—The Secretary shall use amounts made available under subsection (a)(1) in each fiscal year to provide funds to each State that is eligible under subsection (c) to reimburse such State for amounts expended by the State under the State program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or any other State health program for the treatment of individuals with tobacco-related illnesses or conditions.

23 (2) AMOUNT.—

24 (A) IN GENERAL.—Except as provided in  
25 subparagraph (B), the amount for which a

1 State is eligible under paragraph (1) shall be  
2 based on the ratio of the total Federal pay-  
3 ments to the State under title XIX of the Social  
4 Security Act (42 U.S.C. 1396 et seq.) for the  
5 fiscal year involved to the total Federal pay-  
6 ments to all States under such title for such fis-  
7 cal year.

8 (B) SPECIAL PAYMENT RULE.—In the case  
9 of a State that, as of the date of the enactment  
10 of this Act, has resolved tobacco-related civil ac-  
11 tions through judicial consent decrees with a  
12 manufacturer described in section 102(i), the  
13 amount determined under subparagraph (A)  
14 shall be reduced by an amount equal to the  
15 amount by which such manufacturer's payment  
16 under section 102(a)(2) is reduced under sec-  
17 tion 102(i) as a result of such settlement.

18 (3) ADJUSTMENT.—With respect to a fiscal  
19 year in which the amount determined under para-  
20 graphs (1) and (2) of subsection (a) exceeds the lim-  
21 itation under subsection (a)(3), the Secretary shall  
22 make pro rata reductions in the amounts provided to  
23 States under this subsection.

24 (4) REALLOTMENT.—The amount for which a  
25 State is eligible under this subsection that is not

1       made available to the State as a result of the failure  
2       of the State to meet the requirements of subsection  
3       (c) shall be made available to other States on a pro  
4       rata basis.

5               (5) USE OF FUNDS.—

6               (A) IN GENERAL.—Amounts provided to a  
7       State under this subsection shall be used—

8                       (i) to reimburse the State for expenses  
9                       incurred by the State under the State pro-  
10                      gram under title XIX of the Social Secu-  
11                      rity Act (42 U.S.C. 1396 et seq.) relating  
12                      to the treatment of tobacco-related ill-  
13                      nesses or conditions;

14                     (ii) to reimburse the State for other  
15                     expenses incurred by the State in providing  
16                     directly, or reimbursing others for the pro-  
17                     vision of, treatment for tobacco-related ill-  
18                     nesses or conditions; and

19                     (iii) to provide funds to local govern-  
20                     mental entities as provided for in sub-  
21                     section (d).

22               (B) LIMITATION.—A State may not use  
23       amounts provided under this subsection for pro-  
24       grams or projects not approved of by the Sec-  
25       retary.

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

3 (1) agree to resolve in accordance with section  
4 701 any civil action that has been commenced by the  
5 State against a tobacco manufacturer, distributor, or  
6 retailer of a tobacco product seeking recovery for ex-  
7 penditures attributable to the treatment of tobacco  
8 induced illnesses and conditions or other damages;

9 (2) prepare and submit to the Secretary a de-  
10 scription of the manner in which the State will com-  
11 ply with the requirements of subsection (d) and a  
12 certification that all actions described in paragraph  
13 (1) have been dismissed; and

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

16 (d) FUNDS FOR LOCAL GOVERNMENTAL ENTI-  
17 TIES.—To be eligible to receive funds under subsection  
18 (b), a State shall have adopted procedures to provide an  
19 equitable portion of such funds to local governmental enti-  
20 ties within the State that can demonstrate that such enti-  
21 ties incurred tobacco-related health costs through—

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

25 (2) the provision of indigent care;

1 (3) the provision of health care coverage to gov-  
2 ernmental employees; or

3 (4) the implementation of tobacco product en-  
4 forcement or tobacco product regulatory require-  
5 ments in accordance with this Act.

6 **CHAPTER 2—FEDERAL HEALTH**  
7 **PROGRAMS**

8 **SEC. 121. NATIONAL INSTITUTES OF HEALTH TRUST FUND**  
9 **FOR HEALTH RESEARCH.**

10 (a) CREATION OF TRUST FUND.—There is estab-  
11 lished in the Treasury of the United States a trust fund  
12 to be known as the “National Institutes of Health Trust  
13 Fund for Health Research” (hereafter referred to in this  
14 section as the “Trust Fund”), consisting of such amounts  
15 as may be appropriated or transferred to the Trust Fund  
16 as provided in this section.

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

21 (c) OBLIGATIONS FROM TRUST FUND.—

22 (1) IN GENERAL.—Subject to the provisions of  
23 paragraph (4), with respect to the amounts made  
24 available in the Trust Fund in a fiscal year, the Sec-  
25 retary shall distribute during any fiscal year—

1           (A) 2 percent of such amounts to the Of-  
2           fice of the Director of the National Institutes of  
3           Health to be allocated at the Director's discre-  
4           tion—

5                   (i) for carrying out the responsibilities  
6                   of the Office of the Director, including the  
7                   Office of Research on Women's Health and  
8                   the Office of Research on Minority Health,  
9                   the Office of Alternative Medicine, the Of-  
10                  fice of Rare Disease Research, the Office  
11                  of Behavioral and Social Sciences Research  
12                  (for use for efforts to reduce tobacco use),  
13                  the Office of Dietary Supplements, and the  
14                  Office for Disease Prevention; and

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

18           (B) 2 percent of such amounts for transfer  
19           to the National Center for Research Resources  
20           to carry out section 1502 of the National Insti-  
21           tutes of Health Revitalization Act of 1993 con-  
22           cerning Biomedical and Behavioral Research  
23           Facilities;

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

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

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

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

13 (G) the remainder of such amounts to  
14 member institutes and centers, including the  
15 Office of AIDS Research, of the National Insti-  
16 tutes of Health in the same proportion to such  
17 remainder, as the amount of annual appropria-  
18 tions under appropriations Acts for each mem-  
19 ber institute and center for the fiscal year bears  
20 to the total amount of appropriations under ap-  
21 propriations Acts for all member institutes and  
22 centers of the National Institutes of Health for  
23 the fiscal year.

24 (2) PLANS OF ALLOCATION.—The amounts  
25 transferred under paragraph (1)(E) shall be allo-



1 cated by the Director of the National Institutes of  
2 Health or the various directors of the institutes and  
3 centers, as the case may be, pursuant to allocation  
4 plans developed by the various advisory councils to  
5 such directors, after consultation with such  
6 directors.

7 (3) GRANTS AND CONTRACTS FULLY FUNDED  
8 IN FIRST YEAR.—With respect to any grant or con-  
9 tract funded by amounts distributed under para-  
10 graph (1), the full amount of the total obligation of  
11 such grant or contract shall be funded in the first  
12 year of such grant or contract, and shall remain  
13 available until expended.

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

16 (A) TRIGGER AND RELEASE.—No expendi-  
17 ture shall be made under paragraph (1) during  
18 any fiscal year in which the annual amount ap-  
19 propriated for the National Institutes of Health  
20 is less than the amount so appropriated for fis-  
21 cal year 1999.

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

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

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

7 (iii) 75 percent of the amount in the  
8 Trust Fund is distributed in the third fis-  
9 cal year for which funds are available; and

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

14 (d) BUDGET TREATMENT OF AMOUNTS IN TRUST  
15 FUND.—The amounts in the Trust Fund shall be excluded  
16 from, and shall not be taken into account, for purposes  
17 of any budget enforcement procedure under the Congres-  
18 sional Budget Act of 1974 or the Balanced Budget and  
19 Emergency Deficit Control Act of 1985.

**CHAPTER 3—INVESTMENTS FOR  
CHILDREN**

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

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

(1) Improving the affordability of child care through increased appropriations for child care under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

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

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

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

1        ening the quality of child care, improving health  
2        services, and improving services for children with  
3        disabilities.

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

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

13        (a) GRANTS AUTHORIZED.—The Secretary of Edu-  
14        cation shall use amounts made available under section  
15       101(d)(3) for a fiscal year to award grants to States and  
16       local educational agencies to train, recruit and hire ele-  
17       mentary school teachers for the purpose of reducing the  
18       average class size for students in grades 1 through 3 to  
19       not more than 18 students per teacher.

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

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

3 (2) teacher preparation and certification; and

4 (3) accountability for improved student achieve-  
5 ment.

6 (c) STATE PLAN.—

7 (1) IN GENERAL.—Each State desiring a grant  
8 under this section shall submit to the Secretary of  
9 Education a State plan at such time, in such man-  
10 ner, and accompanied by such information as the  
11 Secretary may require.

12 (2) CONTENTS.—Each State plan shall dem-  
13 onstrate to the satisfaction of the Secretary of Edu-  
14 cation that—

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

19 (B) the State will use the funds made  
20 available under this section to reduce class size  
21 for students in grades 1 through 3 in elemen-  
22 tary schools throughout the State, focusing on  
23 using the funds to train, recruit, and hire  
24 teachers for elementary schools serving commu-  
25 nities with the least available resources for such

1 activities and the largest class sizes in those  
2 grades; and

3 (C) of the funds that are made available to  
4 the State under this section, the State will  
5 make available to each local educational agency  
6 that serves children in grades 1 through 3 and  
7 in which at least 30 percent of the children are  
8 from families below the Federal poverty level, at  
9 least as great a percentage of such funds as the  
10 percentage of funds provided to that local edu-  
11 cational agency as compared to other local edu-  
12 cational agencies in the State under part A of  
13 title I of the Elementary and Secondary Edu-  
14 cation Act of 1965.

15 (3) APPROVAL.—The Secretary shall approve a  
16 State plan submitted under paragraph (1) if the  
17 State plan meets the requirements of this sub-  
18 section.

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

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

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

4 “(A) administrative costs of eligibility de-  
5 terminations that (but for the enactment of this  
6 section) would not be incurred; and

7 “(B) outreach activities to enroll uninsured  
8 children in a State plan approved under this  
9 title or title XXI.”; and

10 (2) by striking paragraphs (3) and (4) and in-  
11 serting the following:

12 “(3) LIMITATION.—

13 “(A) IN GENERAL.—Beginning with fiscal  
14 year 1998, the total amount of additional Fed-  
15 eral funds that are expended as a result of the  
16 application of this subsection shall not exceed  
17 \$525,000,000.

18 “(B) AVAILABILITY OF APPROPRIATION.—  
19 Any amount appropriated in accordance with  
20 this paragraph shall remain available until ex-  
21 pended.

22 “(C) EQUITABLE DISTRIBUTION OF  
23 FUNDS.—In applying this paragraph, the Sec-  
24 retary shall ensure the equitable distribution of  
25 additional funds among the States.”.

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

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

6 (A) in subparagraph (A)(i)—

7 (i) by striking “or (II)” and inserting  
8 “, (II)”; and

9 (ii) by inserting “, or (III) is an ele-  
10 mentary school or secondary school, as  
11 such terms are defined in section 14101 of  
12 the Elementary and Secondary Education  
13 Act of 1965 (20 U.S.C. 8801), is a child  
14 care resource and referral agency, a child  
15 support enforcement agency, or is author-  
16 ized to determine the eligibility of a child  
17 for obtaining child health assistance under  
18 title XXI that is in the form of coverage  
19 that meets the requirements of section  
20 2103” before the semicolon; and

21 (B) in subparagraph (C), by striking “lim-  
22 iting the classes of” and inserting “imposing  
23 limitations on”.

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



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

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

5               (1) IN GENERAL.—Section 2104(d) of the So-  
6       cial Security Act (42 U.S.C. 1397dd(d)) is amended  
7       to read as follows:

8       “(d) CERTAIN MEDICAID EXPENDITURES COUNTED  
9       AGAINST INDIVIDUAL STATE ALLOTMENTS.—The amount  
10      of the allotment otherwise provided to a State under sub-  
11      section (b) or (c) for a fiscal year shall be reduced by the  
12      amount (if any) of the payments made to that State under  
13      section 1903(a) for expenditures claimed by the State dur-  
14      ing such fiscal year that is attributable to the provision  
15      of medical assistance to a child for which payment is made  
16      under section 1903(a)(1) on the basis of an enhanced  
17      FMAP under the fourth sentence of section 1905(b).”.

18              (2) RETROACTIVITY.—The amendment made by  
19      paragraph (1) takes effect as if included in the en-  
20      actment of section 4901 of the Balanced Budget Act  
21      of 1997 (Public Law 105-33; 111 Stat. 552).

22      (d) MEDICAID AND STATE CHILDREN’S HEALTH IN-  
23      SURANCE PROGRAM ELIGIBILITY FOR LEGAL IMMIGRANT  
24      CHILDREN WHO ENTERED THE UNITED STATES AFTER  
25      AUGUST 1996.—

1           (1) EXEMPTION FROM 5-YEAR BAN.—Section  
2       403 of the Personal Responsibility and Work Oppor-  
3       tunity Reconciliation Act of 1996 (8 U.S.C. 1613),  
4       as amended by sections 5302(c)(1)(B) and 5303(c)  
5       of the Balanced Budget Act of 1997 (Public Law  
6       105-33; 111 Stat. 599, 600), is amended by adding  
7       at the end the following:

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

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

18           “(2) medical assistance under title XIX of such  
19      Act (42 U.S.C. 1396 et seq.), if the individual is an  
20      optional targeted low-income child described in sec-  
21      tion 1905(u)(2)(B) of such Act (42 U.S.C.  
22      1396d(u)(2)(B)).”.

23           (2) NONAPPLICATION OF STATE AUTHORITY TO  
24      DETERMINE ELIGIBILITY FOR MEDICAID.—Section  
25      402(b)(2) of the Personal Responsibility and Work

1 Opportunity Reconciliation Act of 1996 (8 U.S.C.  
2 1612(b)(2)), as amended by sections 5303(b) and  
3 5305(b) of the Balanced Budget Act of 1997 (Public  
4 Law 105-33; 111 Stat. 600, 601), is amended—

5 (A) in the matter preceding subparagraph  
6 (A), by striking “Qualified” and inserting “Ex-  
7 cept as provided in subparagraphs (A), (E),  
8 (F), and (G), qualified”; and

9 (B) by adding at the end the following:

10 “(G) MEDICAID EXCEPTION FOR CERTAIN  
11 CHILDREN.—With respect to eligibility for bene-  
12 fits for the program described in section  
13 403(e)(2), paragraph (1) shall not apply to any  
14 individual described in that section.”.

15 (3) RETROACTIVITY.—The amendments made  
16 by paragraphs (1) and (2) take effect as if included  
17 in the enactment of the Balanced Budget Act of  
18 1997 (Public Law 105-33; 111 Stat. 251).

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

23 “(x) PERFORMANCE BONUS FOR REDUCTION IN ELI-  
24 GIBLE BUT UNENROLLED CHILDREN.—

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

7           “(2) PERFORMANCE BONUS.—

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

11               “(i) the excess baseline enrollment for  
12      the State for the fiscal year;

13               “(ii) the average per child expendi-  
14      tures by the State under this title for the  
15      fiscal year; and

16               “(iii) the enhanced FMAP for the  
17      State for the fiscal year described in sec-  
18      tion 2105(b).

19           “(B) DETERMINATION OF THE EXCESS  
20      BASELINE ENROLLMENT.—

21               “(i) IN GENERAL.—For purposes of  
22      subparagraph (A)(i), the excess baseline  
23      enrollment for a State for a fiscal year is  
24      the difference between (I) the actual num-  
25      ber of full year equivalent children enrolled

1 under the State plan and (II) the baseline  
2 number of full year equivalent children  
3 that would be enrolled under the State  
4 plan in the absence of the performance  
5 bonus outreach efforts of the State.

6 “(ii) DETERMINATION OF THE BASE-  
7 LINE NUMBER OF FULL YEAR EQUIVALENT  
8 CHILDREN.—For purposes of clause (i)(II),  
9 the baseline number of full year equivalent  
10 children that would be enrolled under the  
11 State plan in the absence of the perform-  
12 ance bonus outreach efforts of the State  
13 is—

14 “(I) in the case of fiscal year  
15 1999, the actual number of full year  
16 equivalent children enrolled under the  
17 State plan in fiscal year 1998, in-  
18 creased by the national percentage in-  
19 crease for fiscal year 1999 in the  
20 number of full year equivalent chil-  
21 dren enrolled in all State plans under  
22 this title, as projected by the Congres-  
23 sional Budget Office in January 1998;  
24 and

1                   “(II) in the case of any succeed-  
2                   ing fiscal year, the baseline number of  
3                   full year equivalent children that  
4                   would be enrolled under the State  
5                   plan in the absence of the perform-  
6                   ance bonus outreach efforts of the  
7                   State determined for the preceding  
8                   fiscal year, increased by the national  
9                   percentage increase for that succeed-  
10                  ing fiscal year in the number of full  
11                  year equivalent children enrolled in all  
12                  State plans under this title, as pro-  
13                  jected by the Congressional Budget  
14                  Office in January 1998.

15                  “(C) DETERMINATION OF AVERAGE PER  
16                  CHILD EXPENDITURES.—For purposes of sub-  
17                  paragraph (A)(ii), the average per child expend-  
18                  itures by a State under this title for a fiscal  
19                  year is—

20                  “(i) the total amount paid to the  
21                  State under subsection (a)(1) that is at-  
22                  tributable to medical assistance provided to  
23                  children under the State plan; divided by

1                   “(ii) the actual number of full year  
2                   equivalent children enrolled under the  
3                   State plan in that fiscal year.

4                   “(3) DATA REQUIREMENTS.—Each State shall  
5                   submit to the Secretary such data, at such time and  
6                   in such manner, as the Secretary determines is nec-  
7                   essary to make the payments required under this  
8                   subsection. The Secretary shall ensure that data is  
9                   provided under this subsection in a manner that is  
10                  consistent with other data reporting requirements  
11                  for information required to be submitted by a State  
12                  under this title and title XXI, and that avoids dupli-  
13                  cation of reporting requirements.

14                  “(4) STATES WITH SIGNIFICANTLY HIGHER IN-  
15                  CREASED ACTUAL ENROLLMENT THAN THE EX-  
16                  PECTED NATIONAL INCREASE.—For any fiscal year,  
17                  if a State’s actual full year equivalent children en-  
18                  rollment percentage increase over the preceding fis-  
19                  cal year is at least twice the estimated national per-  
20                  centage increase in such enrollment for that fiscal  
21                  year, as projected by the Congressional Budget Of-  
22                  fice in January 1998, the State shall submit such  
23                  additional information as the Secretary determines  
24                  is necessary to verify that the increase is the result  
25                  of the State reducing the number of unenrolled chil-

1       dren who are eligible for medical assistance under  
2       this title in the State.

3           “(5) TIMING OF PERFORMANCE BONUS PAY-  
4       MENTS; RECONCILIATION.—The Secretary shall pay  
5       the performance bonuses required under this sub-  
6       section for a fiscal year not later than September 30  
7       of the succeeding fiscal year based on reporting data  
8       that reflects each State’s actual number of full year  
9       equivalent children enrolled under the State plan  
10      and average per child expenditures. A State shall  
11      provide the Secretary with access to any records or  
12      information relevant to the payment of a perform-  
13      ance bonus under this subsection for the purposes of  
14      review or audit.

15           “(6) WAIVERS.—The provisions of this sub-  
16      section apply to a State providing medical assistance  
17      under this title under waiver authority in the same  
18      manner as they apply to a State with an approved  
19      plan under this title.”.

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

23      (a) ESTABLISHMENT.—The Secretary shall establish  
24      a 3-year demonstration project which provides for pay-  
25      ment under the medicare program under title XVIII of



1 the Social Security Act (42 U.S.C. 1395 et seq.) of routine  
2 patient care costs—

3 (1) which are provided to an individual diag-  
4 nosed with cancer and enrolled in the medicare pro-  
5 gram under such title as part of the individual's par-  
6 ticipation in an approved clinical trial program; and

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

10 (b) APPLICATION.—The beneficiary cost sharing pro-  
11 visions under the medicare program, such as deductibles,  
12 coinsurance, and copayment amounts, shall apply to any  
13 individual participating in a demonstration project con-  
14 ducted under this section.

15 (c) APPROVED CLINICAL TRIAL PROGRAM.—For  
16 purposes of this section, the term “approved clinical trial  
17 program” means a clinical trial program which is ap-  
18 proved by—

19 (1) the National Institutes of Health;

20 (2) a National Institutes of Health cooperative  
21 group or a National Institutes of Health center;

22 (3) the Food and Drug Administration (in the  
23 form of an investigational new drug or device exemp-  
24 tion);

25 (4) the Department of Veterans Affairs;

1 (5) the Department of Defense; or

2 (6) a qualified nongovernmental research entity  
3 identified in the guidelines issued by the National  
4 Institutes of Health for center support grants.

5 (d) ROUTINE PATIENT CARE COSTS.—

6 (1) IN GENERAL.—For purposes of this section,  
7 “routine patient care costs” shall include the costs  
8 associated with the provision of items and services  
9 that—

10 (A) would otherwise be covered under the  
11 medicare program if such items and services  
12 were not provided in connection with an ap-  
13 proved clinical trial program; and

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

16 (2) EXCLUSION.—For purposes of this section,  
17 “routine patient care costs” shall not include the  
18 costs associated with the provision of—

19 (A) an investigational drug or device, un-  
20 less the Secretary has authorized the manufac-  
21 turer of such drug or device to charge for such  
22 drug or device; or

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

1       (e) STUDY.—The Secretary shall study the impact on  
2 the medicare program under title XVIII of the Social Se-  
3 curity Act of covering routine patient care costs for indi-  
4 viduals with a diagnosis of cancer and other diagnoses,  
5 who are entitled to benefits under such title and who are  
6 enrolled in an approved clinical trial program.

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

14       (g) FUNDING.—The shall use amounts made avail-  
15 able under section 101(d)(8)(A) for a fiscal year to carry  
16 out this section.