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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, Dr. Jere Allen, Executive Director, District of Columbia Baptist Convention.

We are very pleased to have you with us.

PRAYER

The guest Chaplain, Dr. Jere Allen, offered the following prayer:

Let us pray.

Dear Heavenly Father, we acknowledge that Thou art the creator and sustainer of this, Thy universe, and we are called to be caretakers of all Thou hast made for an appointed time. Guide the inner control centers of these Thy servants in the Senate that they might be responsible stewards of the power of decision granted to them. Bring to their consciousness that evil rewards with temporary power and impermanent gain, but righteousness is eternally on the scaffolds and will ultimately sway the future. Move their consciousness upward toward the crystal clear purity of Thyself. Grant those who serve here the ability to hear Thy voice in the midst of a cacophony of conflicting opinions that vie for attention. Endow them with wisdom, patience, courage and peace as they make and live with decisions that affect so many. In Your holy Name we pray. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

Mr. HUTCHINSON. I thank the Chair.

APPRECIATION OF THE OPENING PRAYER

Mr. HUTCHINSON. Mr. President, I join my colleagues in thanking our visiting Chaplain for the opening prayer today.

SCHEDULE

Mr. HUTCHINSON. Mr. President, for the information of all Senators, today there will be a period of morning business until 10 a.m. Following morning business, the Senate will resume consideration of S. 1415, the tobacco legislation. It is hoped that Members will come to the floor to debate this important legislation and other amendments under short time agreements. Rollcall votes may occur prior to the 12:30 policy luncheons, and Members should expect those throughout today's session in order to make good progress on the tobacco bill.

I thank my colleagues for their attention.

The PRESIDENT pro tempore. The able minority leader is recognized.

(Mr. HUTCHINSON assumed the Chair.)

TOBACCO AND PUBLIC HEALTH

Mr. DASCHLE. Mr. President, the debate on tobacco legislation that we will begin again at 10 o'clock this morning is one of the most significant in which any of us will ever be involved.

Smoking is, in the words of former Surgeon General C. Everett Koop, ''the chief, single avoidable cause of death in our society, and the most important public health issue of our time.''

Every year, tobacco kills more than 400,000 Americans—accounting for more than one out of every five deaths in our country. Smoking kills more people than die from AIDS, alcohol, car accidents, murders, suicides and fires—combined.

So often, when we hear that someone has died as a result of smoking, we think, ''That was their choice. They were adults.''

But chances are, they were not adults when they made the decision to pick up that first cigarette.

Ninety percent of adult smokers started smoking at or before the age of 18—before they were even old enough to buy cigarettes legally.

The average youth smoker starts smoking at 13, and is addicted by the time he or she is 14. One out of every three of those children will eventually die from smoking.

It may take another 20 or 30—or even 50—years until that decision catches up with them. But the decision is made when they are children.

That is what this debate is really about. Are we willing, as a nation, to protect our children from an epidemic that may eventually kill them?

During the first half of this century, another epidemic threatened America's children: polio.

Summer was a time of fear for American parents and their children. Parents kept their children out of swimming pools, movie theaters—anywhere the virus might be spread.

Still, thousands of children died every year from polio, and tens of thousands were crippled.

The worst polio epidemic in U.S. history occurred in 1952, when nearly 60,000 new cases were reported.

Back then, America marshaled all its resources and all its resolve and, in 1953, Jonas Salk discovered a vaccine.

As a result, polio has all but vanished from this nation.

We may not be able to eliminate all tobacco-related disease, as we eliminated polio. But we can dramatically reduce the number of people who pick up that first cigarette as teenagers and become addicted and eventually die from smoking.

The bill that will be pending in just a few moments provides the comprehensive approach that is needed to do that.

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

It is supported by a majority of this Senate—Democrats and Republicans—and by the President.

More importantly, it is supported by the American people.

CIGARETTE COMPANIES TARGET KIDS

Smoking by teenagers is now at a 19-year high.

Every day, 3,000 kids become regular smokers. That's more than a million kids a year.

The increase in teen smoking is not an accident. It is the result of a deliberate and aggressive marketing campaign.

Once-secret internal industry documents make it clear that the tobacco industry targets kids—and has for more than 25 years.

The tobacco industry spends $13 million a day—$5 billion a year—on advertising. Many of their ads are specifically targeted to kids.

A 1981 Philip Morris internal memo makes clear why.

According to that memo, ''The overwhelming majority of smokers first begin to smoke while still in their teens . . . The smoking patterns of teenagers are particularly important to Philip Morris.''

A 1984 RJ Reynolds internal memo—written just before RJR launched its ''Joe Camel'' campaign—is even more blunt.

''If younger adults turn away from smoking,'' it says, ''the (tobacco) industry must decline, just as a population that does not give birth will eventually dwindle . . . Younger adult smokers are our only source of replacement smokers.''

''Replacement smokers.'' That's how RJR sees children: as ''replacements'' for older smokers who quit—or die from tobacco-related disease.

If we can keep kids from smoking when they're young, chances are they will never smoke.

Tobacco companies know that. That's one reason they're spending $50 million to try to kill this bill.

THE TOBACCO INDUSTRY IS SCARED

Another reason is because they don't want to be held accountable for the damage they knowingly caused in the past.

The tobacco industry is being sued by states across the country. States are demanding to be reimbursed for billions of dollars they have already spent treating smoking-related illnesses.

The cases aren't going well for the industry. In the last year alone, it has settled out of court with four states, rather than risk going into court and losing even more.

The $6.6 billion the tobacco industry agreed to earlier this month to pay Minnesota is the third-largest court settlement in U.S. history. It is topped only by the $11.3 billion it agreed to pay Florida, and the $15.3 billion it will pay Texas.

THE TRUTH ABOUT THE TOBACCO BILL

The tobacco industry is scared. So they are spending $50 million to try to kill this bill. We have all heard their arguments.

First, they are trying to convince the American people that the only reason Congress wants to pass a tobacco bill is to raise mountains of money.

The truth is, 40 percent of the money that would be raised by this bill wouldn't go to the federal government at all.

It would go to state taxpayers, to reimburse them for money they've already spent treating tobacco-related illnesses.

The rest of the money would be used for three purpose: To support medical research on treating smoking-related illness and preventing smoking; to dramatically reduce teen smoking; and to help tobacco farmers make the transition to other crops.

The industry's second argument is that this bill will create a black market for cigarettes.

They point to the cigarette smuggling problems Canada experienced in the early 1990s when it raised tobacco prices.

The reality is, our bill includes tough anti-smuggling, anti-black market provisions that Canada lacked.

It is worth mentioning, I think, that a lobbyist who enlisted several law enforcement groups to warn that this bill could create a black market in cigarettes also has another employer: a leading tobacco company.

The third argument the tobacco industry makes is that our bill would drive cigarette companies into bankruptcy.

Mr. President, the tobacco industry makes $100 billion a year.

Even if it made only $100 million a year, it still would not be in danger of bankruptcy because, under this bill, it is smokers—not tobacco companies—who pay.

Finally, the tobacco industry wants people to believe that we're on a slippery slope; that today, tobacco is the whipping boy, but next it will be alcohol or some other product.

This argument ignores one crucial distinction: tobacco is the only legal product sold in the United States that will kill you when used as intended.

Mr. President, the companies that are making these claims are the same companies whose CEOs raised their hands and swore before Congress that cigarettes are not addictive.

They were blowing smoke then, and they are blowing smoke now.

As I said, this is a historic opportunity. If we fail to grasp it, our Nation will pay a terrible price. Unless we reverse current trends, 5 million children who are under the age of 18 today will die from smoking-related illnesses.

Have you ever known anyone who has died from cancer or emphysema or some other tobacco-related disease?

It's torture—on them, and for the people who love them. Unless we act now to reverse current trends, Americans will spend $1 trillion over the next 20 years—$1 trillion, a thousand-billion dollars—to treat smoking-related illnesses.

This bill would raise $516 billion over 25 years, $516 billion over 25 years to save $1 trillion over 20 years—and 5 million children. Mr. President, that sounds like a pretty good deal to me.

Several years ago, internal documents that the tobacco industry had for years kept secret—that the industry had for years denied even existed—began to trickle out. After a while, the trickle became a flood. As a result of these documents, we now know cigarette manufacturers have known for decades that tobacco is addictive.

We now know that cigarettes kill people directly, and they are a contributing cause of illnesses from heart disease to sudden infant death syndrome. We now know that tobacco companies manipulate the level of nicotine in cigarettes to hook smokers. We now know that the industry aggressively targets children. We now know that the price of cigarettes influences kids' decision to smoke. We know that's true. But we also know it's not enough.

The only way we are going to break the deadly cycle of teen smoking and addiction and death is with a comprehensive bill that includes price hikes, plus strong counter-advertising efforts and effective retail licensing, and sets goals for reducing teen smoking and sanctions against tobacco companies for failure to attain them. That is what this bill contains. If we can improve it, we should. And then we should pass this bill, and urge the House to pass it as well.

Teen smoking is an epidemic. If this Congress can't protect children from a deadly health threat, what in the world can we do?

In 1973, a senior RJ Reynolds employee wrote a memo entitled ''research planning memorandum on some thoughts about new brands of cigarettes for the youth market.'' In that memo, he argued—and I quote—''there is certainly nothing immoral or unethical about our company attempting to attract (teen) smokers to our products.''

Mr. President, most Americans disagree with that assertion. Most Americans believe that aggressively marketing to children a product you know could eventually kill them is both immoral and unethical. And, they believe it ought to be illegal.

As the industry's own documents reveal, most adult smokers start smoking as teenagers. Victor Crawford was one of those kids.

He started smoking when he was 13 years old. He died 50 years later, after the cancer that was caused by smoking had spread from his throat to his pelvis, lungs and liver. As a adult Victor Crawford served 16 years as a member of Maryland's House of Delegates and its state Senate. He was a colorful and effective politician. He was also a 2½ pack-a-day smoker. In 1986, Victor Crawford left politics and went to work in Maryland's state capital into the

work of lobbying. One of his clients was the Tobacco Institute, the propaganda arm of the tobacco industry. The Tobacco Institute paid him $200 an hour to help kill whatever tobacco restrictions came before the Maryland General Assembly.

Six years later, in 1992, he was diagnosed with throat cancer. His doctors told him he had three months to live. But, with the help of new and experimental treatments, he managed to hang on for three years.

Victor Crawford used those last three years of his life to prevent other young people from making the same mistake he had made when he picked up that first cigarette at 13.

A first reluctantly, then passionately, he spoke about the pain of his illness, and his remorse over having contributed, through his work, to the suffering of others.

He described his former employers, the tobacco industry, as ''hard-nosed, brilliant and ruthless. I can also state without question,'' he said, ''that the profit motive is supreme, and that there is no avenue they will not explore and no means they will not use to that end.''

He told his story to state legislatures, on ''60 Minutes,'' in Ann Landers' column—wherever he thought it would get through.

A year and a half before he died, he returned to the Maryland Statehouse—to the place where he had worked as a legislator and lobbyist. Only this time he as a witness, testifying in support of a law regulating public smoking. He wore a wig to hid the baldness caused by chemotherapy, and he was terribly gaunt. But everyone who heard him was deeply moved.

Said on of his former colleagues after his testimony, ''Yours was the voice of truth.''

Mr. President, Victor Crawford's voice—and the voice of America's children—are calling to us today.

They are asking us to protect them from addiction.

They are asking us to protect them from painful and premature death.

Are we listening?

It is time for Congress to pass a national bill to reduce teen smoking and to tell the cigarette manufacturers, ''Our children are not 'replacement smokers,' and you cannot prey on them anymore.''

I yield the floor.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order there will now be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for up to 5 minutes each.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I understand we are in morning business?

The PRESIDING OFFICER. The Senator is correct.

TROUBLING NEW DEVELOPMENTS IN SOUTH ASIA

Mr. HARKIN. Mr. President, I wanted to take just a little bit of time this morning to again alert Senators and others about troubling new developments in South Asia after India thumbed its nose at the world community and exploded five underground nuclear weapons. Conditions seem to be spiraling out of control in the nation of India. We now see that a key Indian official, according to the news this morning, a key Indian official is warning Pakistan and making very threatening, provocative statements, about the area that we know as Jammu-Kashmir. Indian Home Minister Advani—there is a picture of him here clenching his fist, saying they were, basically, not going to have a peaceful resolution at all of the situation in Kashmir. I am quoting from the article:

> While India's previous government had a policy of not making hostile statements about Pakistan, the BJP [that is the party that is now in power in India] as recently as two years ago advocated ''reclaiming'' Pakistan's portion of Kashmir.

It is interesting that:

> In the course [it says here] of broadening its platforms for this year's parliamentary elections—and cobbling together a coalition government of 14 disparate parties—such references to Kashmir were dropped. But Advani [the Home Minister] was pointed in his reference today to the disputed state, although he couched it more in terms of Pakistan's stance toward Kashmir than India's.

But now Advani said, and I quote from the article:

> [Nuclear weapons tests] has brought about a qualitatively new stage in Indo-Pakistan relations and signifies—even while adhering to the principle of no first strike—[that] India is resolved to deal firmly with Pakistan's hostile activities in Kashmir.

Wait a minute, Mr. President. He is talking about Pakistan's hostile activities in Kashmir? It is India that has around 300,000 troops in Kashmir. It is India that is spending about a large portion of its military budget every year in Kashmir. It is by Indian troops that human rights groups have said that in the last several years, perhaps in the last 10 years, upwards of 13,000 people have been killed in Kashmir—not by Pakistani troops, but by Indian troops.

What this Home Minister Advani is doing is trying to cover what India has done in Kashmir by blaming it on Pakistan.

Quite frankly, Kashmir is the East Timor of South Asia, to those of us who have followed the problems of East Timor, a tiny little island nation on the eastern tip of Indonesia. It was a Portuguese colony for several hundred years. When the Portuguese left, the Indonesians came in to claim East Timor, but they have no rightful claim to it; it is a separate island nation.

Since that time, East Timorese have been put to death by the Indonesians, slaughtered, people driven out of their homes, driven out of their jobs. What has happened in East Timor is a blight on Indonesia, and the world community has spoken out forcefully against what Indonesia has done in East Timor. But the world community is standing silently by while the same kind of slaughter and repression is occurring in the tiny state of Kashmir.

If you go back to when India and Pakistan were partitioned off, this tiny area up in northwest India on the border of Pakistan and India, the United Nations recognized in the late 1940s that this issue needed to be resolved, and urged for it to be resolved through a plebiscite, to have a vote of the people in this area: Did they want to stay with Pakistan, or did they want to go with India?

But India refuses outside mediation, even from the UN. I had always hoped, as many have hoped, that we would have some kind of a peaceful resolution of Kashmir. But now India is shaking its fist at Pakistan and speaking provocatively of reclaiming certain areas of Kashmir that have already been recognized as being at least an adjunct to, adhering to Pakistan, an area called Azad Kashmir.

Mr. President, I don't think we can idly stand by and let India continue these kinds of provocative measures. The world community must speak with one voice in condemning the actions by India with strong sanctions. I will have a sense-of-the-Senate resolution, which I hope we can bring up sometime this week in conjunction with others, dealing with the Indian explosion of nuclear weapons and dealing with the Pressler amendment that Senator BROWNBACK and I will be offering sometime this week, I hope.

I have a sense-of-the-Senate resolution calling upon the United States to take the lead in getting other nations together to act as an intermediary in the dispute on Kashmir. Better that we act now, better that we try to seek peaceful resolutions of Kashmir before this whole thing blows up, before the BJP of India is able to take it to a higher level, a more provocative level that would involve the use of arms.

I hope we can get the support of other Senators in asking the United States to act as a mediator to this very dangerous situation that now exists in Kashmir and South Asia.

I thank the President. I yield the floor.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I am on the floor this morning to introduce a bill called the Emergency Medical Services Efficiency Act. My statement is going to take about 10 or 15 minutes. I ask unanimous consent that I be allowed to have up to 15 minutes, even though I know it is going to run into the time of 10 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMS. Thank you very much.

(The remarks of Mr. GRAMS pertaining to the introduction of S. 2091 are

located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. GRAMS. Thank you very much, Mr. President, for the time. I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1415, which the clerk will report.

The legislative clerk read as follows:

A bill (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.

The Senate resumed consideration of the bill.

MODIFIED COMMITTEE SUBSTITUTE

(The text of the committee substitute, as modified to incorporate the text of amendment No. 2420, submitted on May 18, 1998, reads as follows:)

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Tobacco Policy and Youth Smoking Reduction Act''.

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

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of epic and worsening proportions that results in new generations of tobacco-dependent children and adults.

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

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under Article I, Section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) The citizens of the several States are exposed to, and adversely affected by, environmental smoke in public buildings and other facilities which imposes a burden on interstate commerce.

(13) Civil actions against tobacco product manufacturers and others are pending in Federal and State courts arising from the use, marketing, and sale of tobacco products. Among these actions are cases brought by the attorneys general of more than 40 States, certain cities and counties, and the Commonwealth of Puerto Rico, and other parties, including Indian tribes, and class actions brought by private claimants (such as in the Castano Civil Actions), seeking to recover monies expended to treat tobacco-related diseases and for the protection of minors and consumers, as well as penalties and other relief for violations of antitrust, health, consumer protection, and other laws.

(14) Civil actions have been filed throughout the United States against tobacco product manufacturers and their distributors, trade associations, law firms, and consultants on behalf of individuals or classes of individuals claiming to be dependent upon and injured by tobacco products.

(15) These civil actions are complex, time-consuming, expensive, and burdensome for both the litigants and Federal and State courts. To date, these civil actions have not resulted in sufficient redress for smokers or non-governmental third-party payers. To the extent that governmental entities have been or may in the future be compensated for tobacco-related claims they have brought, it is not now possible to identify what portions of such past or future recoveries can be attributed to their various antitrust, health, consumer protection, or other causes of action.

(16) It is in the public interest for Congress to adopt comprehensive public health legislation because of tobacco's unique position in the Nation's history and economy; the need to prevent the sale, distribution, marketing and advertising of tobacco products to persons under the minimum legal age to purchase such products; and the need to educate the public, especially young people, regarding the health effects of using tobacco products.

(17) The public interest requires a timely, fair, equitable, and consistent result that will serve the public interest by (A) providing that a portion of the costs of treatment for diseases and adverse health effects associated with the use of tobacco products is borne by the manufacturers of these products, and (B) restricting throughout the Nation the sale, distribution, marketing, and advertising of tobacco products only to persons of legal age to purchase such products.

(18) Public health authorities estimate that the benefits to the Nation of enacting Federal legislation to accomplish these goals would be significant in human and economic terms.

(19) Reducing the use of tobacco by minors by 50 percent would prevent well over 60,000 early deaths each year and save up to $43 billion each year in reduced medical costs, improved productivity, and the avoidance of premature deaths.

(20) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(21) In 1995, the tobacco industry spent close to $4,900,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(22) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

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

(24) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(25) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(26) Tobacco advertising increases the size of the tobacco market by increasing consumption of tobacco products including increasing tobacco use by young people.

(27) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands, and children as young as 3 to 6 years old can recognize a character associated with smoking at the same rate as they recognize cartoons and fast food characters.

(28) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market.

(29) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(30) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(31) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones. Text-only requirements, while not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(32) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(33) If, as a direct or indirect result of this Act, the consumption of tobacco products in the United States is reduced significantly, then tobacco farmers, their families, and their communities may suffer economic hardship and displacement, notwithstanding their lack of involvement in the manufacturing and marketing of tobacco products.

(34) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to clarify the authority of the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products;

(2) to require the tobacco industry to fund both Federal and State oversight of the tobacco industry from on-going payments by tobacco product manufacturers;

(3) to require tobacco product manufacturers to provide ongoing funding to be used for an aggressive Federal, State, and local enforcement program and for a nationwide licensing system to prevent minors from obtaining tobacco products and to prevent the unlawful distribution of tobacco products, while expressly permitting the States to adopt additional measures that further restrict or eliminate the products' use;

(4) to ensure that the Food and Drug Administration and the States may continue to address issues of particular concern to public

health officials, especially the use of tobacco by young people and dependence on tobacco;

(5) to impose financial surcharges on tobacco product manufacturers if tobacco use by young people does not substantially decline;

(6) to authorize appropriate agencies of the Federal government to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(7) to provide new and flexible enforcement authority to ensure that the tobacco industry makes efforts to develop and introduce less harmful tobacco products;

(8) to confirm the Food and Drug Administration's authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(9) in order to ensure that adults are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(10) to impose on tobacco product manufacturers the obligation to provide funding for a variety of public health initiatives;

(11) to establish a minimum Federal standard for stringent restrictions on smoking in public places, while also to permit State, Tribal, and local governments to enact additional and more stringent standards or elect not to be covered by the Federal standard if that State's standard is as protective, or more protective, of the public health;

(12) to authorize and fund from payments by tobacco product manufacturers a continuing national counter-advertising and tobacco control campaign which seeks to educate consumers and discourage children and adolescents from beginning to use tobacco products, and which encourages current users of tobacco products to discontinue using such products;

(13) to establish a mechanism to compensate the States in settlement of their various claims against tobacco product manufacturers;

(14) to authorize and to fund from payments by tobacco product manufacturers a nationwide program of smoking cessation administered through State and Tribal governments and the private sector;

(15) to establish and fund from payments by tobacco product manufacturers a National Tobacco Fund;

(16) to affirm the rights of individuals to access to the courts, to civil trial by jury, and to damages to compensate them for harm caused by tobacco products;

(17) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(18) to impose appropriate regulatory controls on the tobacco industry; and

(19) to protect tobacco farmers and their communities from the economic impact of this Act by providing full funding for and the continuation of the Federal tobacco program and by providing funds for farmers and communities to develop new opportunities in tobacco-dependent communities.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—This Act is not intended to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) except as provided in this Act, affect any action pending in State, Tribal, or Federal court, or any agreement, consent decree, or contract of any kind.

(b) TAXATION.—Notwithstanding any other provision of law, this Act and the amendments made by this Act shall not affect any authority of the Secretary of the Treasury (including any authority assigned to the Bureau of Alcohol, Tobacco and Firearms) or of State or local governments with regard to taxation for tobacco or tobacco products.

(c) AGRICULTURAL ACTIVITIES.—The provisions of this Act which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

SEC. 5. RELATIONSHIP TO OTHER, RELATED FEDERAL, STATE, LOCAL, AND TRIBAL LAWS.

(a) AGE RESTRICTIONS.—Nothing in this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), as amended by this Act, shall prevent a Federal agency (including the Armed Forces), a State or its political subdivisions, or the government of an Indian tribe from adopting and enforcing additional measures that further restrict or prohibit tobacco product sale to, use by, and accessibility to persons under the legal age of purchase established by such agency, State, subdivision, or government of an Indian tribe.

(b) ADDITIONAL MEASURES.—Except as otherwise expressly provided in this Act, nothing in this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or rules promulgated under such Acts, shall limit the authority of a Federal agency (including the Armed Forces), a State or its political subdivisions, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products, including laws, rules, regulations, or other measures relating to or prohibiting the sale, distribution, possession, exposure to, or use of tobacco products by persons of any age that are in addition to the provisions of this Act and the amendments made by this Act. No provision of this Act or amendment made by this Act shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

(c) NO LESS STRINGENT.—Nothing in this Act or the amendments made by this Act is intended to supersede any State, local, or Tribal law that is not less stringent than this Act, or other Acts as amended by this Act.

(d) STATE LAW NOT AFFECTED.—Except as otherwise expressly provided in this Act, nothing in this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or rules promulgated under such Acts, shall supersede the authority of the States, pursuant to State law, to expend funds provided by this Act.

SEC. 6. DEFINITIONS.

In this Act:

(1) BRAND.—The term ''brand'' means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

(2) CIGARETTE.—The term ''cigarette'' has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also includes tobacco, in any form, that is functional in the product, 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 or as roll-your-own tobacco.

(3) CIGARETTE TOBACCO.—The term ''cigarette tobacco'' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements for cigarettes shall also apply to cigarette tobacco.

(4) COMMERCE.—The term ''commerce'' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(2)).

(5) DISTRIBUTOR.—The term ''distributor'' as regards a tobacco product means any person who furthers the distribution of cigarette or smokeless tobacco, 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. Common carriers are not considered distributors for purposes of this Act.

(6) INDIAN COUNTRY; INDIAN LANDS.—The terms ''Indian country'' and ''Indian lands'' have the meaning given the term ''Indian country'' by section 1151 of title 18, United States Code, and includes lands owned by an Indian tribe or a member thereof over which the United States exercises jurisdiction on behalf of the tribe or tribal member.

(7) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(8) LITTLE CIGAR.—The term ''little cigar'' has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

(9) NICOTINE.—The term ''nicotine'' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

(10) PACKAGE.—The term ''package'' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which cigarettes or smokeless tobacco are offered for sale, sold, or otherwise distributed to consumers.

(11) POINT-OF-SALE.—The term ''point-of-sale'' means any location at which a consumer can purchase or otherwise obtain cigarettes or smokeless tobacco for personal consumption.

(12) RETAILER.—The term ''retailer'' means any person who sells cigarettes or smokeless tobacco to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

(13) ROLL-YOUR-OWN TOBACCO.—The term ''roll-your-own tobacco'' means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(14) SECRETARY.—Except in title VII and where the context otherwise requires, the term ''Secretary'' means the Secretary of Health and Human Services.

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

(16) STATE.—The term ''State'' means any State of the United States and, for purposes of this Act, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

(17) TOBACCO PRODUCT.—The term ''tobacco product'' means cigarettes, cigarette tobacco, smokeless tobacco, little cigars, roll-your-own tobacco, and fine cut products.

(18) TOBACCO PRODUCT MANUFACTURER.—Except in titles VII, X, and XIV, the term ''tobacco product manufacturer'' means any person, including any repacker or relabeler, who—

(A) manufactures, fabricates, assembles, processes, or labels a finished cigarette or smokeless tobacco product; or

(B) imports a finished cigarette or smokeless tobacco product for sale or distribution in the United States.

(19) UNITED STATES.—The term ''United States'' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

SEC. 7. NOTIFICATION IF YOUTHFUL CIGARETTE SMOKING RESTRICTIONS INCREASE YOUTHFUL PIPE AND CIGAR SMOKING.

The Secretary shall notify the Congress if the Secretary determines that underage use of pipe tobacco and cigars is increasing.

SEC. 8. FTC JURISDICTION NOT AFFECTED.

(a) IN GENERAL.—Except where expressly provided in this Act, nothing in this Act shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

(b) ENFORCEMENT BY FTC.—Any advertising that violates this Act or part 897 of title 21, Code of Federal Regulations, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

SEC. 9. CONGRESSIONAL REVIEW PROVISIONS.

In accordance with section 801 of title 5, United States Code, the Congress shall review, and may disapprove, any rule under this Act that is subject to section 801. This section does not apply to the rule set forth in part 897 of title 21, Code of Federal Regulations.

TITLE I—REGULATION OF THE TOBACCO INDUSTRY

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT OF 1938.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(kk) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after section 803 the following:

''CHAPTER IX—TOBACCO PRODUCTS

''SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS

''(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

''(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

''(2) a health claim is made for such products under section 201(g)(1)(C) or 201(h)(3).

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the provisions of part 897 of title 21, Code of Federal Regulations, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) Nothing in this chapter, any policy issued or regulation promulgated thereunder, or the National Tobacco Policy and Youth Smoking Reduction Act, shall be construed to affect the Secretary's authority over, or the regulation of, products under this Act that are not tobacco products under chapter V of the Federal Food, Drug and Cosmetic Act or any other chapter of that Act.

''(2) The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of the manufacturer, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority whatsoever to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer. Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer. Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production. For purposes of the preceding sentence, the term 'controlled by' means a member of the same controlled group of corporations as that term is used in section 52(a) of the Internal Revenue Code of 1986, or under common control within the meaning of the regulations promulgated under section 52(b) of such Code.

''SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any poisonous or deleterious substance that may render the product injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

''(3) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

''(4) it is, or purports to be or is represented as, a tobacco product which is subject to a performance standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(5) it is required by section 910(a) to have premarket approval, is not exempt under section 906(f), and does not have an approved application in effect;

''(6) the methods used in, or the facilities or controls used for, its manufacture, packing or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(7) it is a tobacco product for which an exemption has been granted under section 906(f) for investigational use and the person who was granted such exemption or any investigator who uses such tobacco product under such exemption fails to comply with a requirement prescribed by or under such section.

''SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor; and

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count,

except that under subparagraph (B) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in any State in an establishment not duly registered under section 905(b), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold, distributed, or used in violation of regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

''(A) a true statement of the tobacco product's established name as defined in paragraph (4) of this subsection, printed prominently; and

''(B) a brief statement of—

''(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

''(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is necessary to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

''(9) if it is a tobacco product subject to a performance standard established under section 907, unless it bears such labeling as may be prescribed in such performance standard; or

''(10) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908;

''(B) to furnish any material or information required by or under section 909; or

''(C) to comply with a requirement under section 912.

''(b) PRIOR APPROVAL OF STATEMENTS ON LABEL.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement and no advertisement of a tobacco product, published after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act shall, with respect to the matters specified in this section or covered by regulations issued hereunder, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55). This subsection does not apply to any printed matter which the Secretary determines to be labeling as defined in section 201(m).

''SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

''(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit to the Secretary the following information:

''(1) A listing of all tobacco ingredients, substances and compounds that are, on such date, added by the manufacturer to the tobacco, paper, filter, or other component of each tobacco product by brand and by quantity in each brand and subbrand.

''(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine.

''(3) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, behavioral, or physiologic effects of tobacco products, their constituents, ingredients, and components, and tobacco additives, described in paragraph (1).

''(4) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(5) All documents (including underlying scientific information) relating to marketing research involving the use of tobacco products.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(b) ANNUAL SUBMISSION.—A tobacco product manufacturer or importer that is required to submit information under subsection (a) shall update such information on an annual basis under a schedule determined by the Secretary.

''(c) TIME FOR SUBMISSION.—

''(1) NEW PRODUCTS.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of this chapter, the manufacturer of such product shall provide the information required under subsection (a) and such product shall be subject to the annual submission under subsection (b).

''(2) MODIFICATION OF EXISTING PRODUCTS.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive, increases or decreases the quantity of an existing tobacco additive or the nicotine content, delivery, or form, or eliminates a tobacco additive from any tobacco product, the manufacturer shall within 60 days of such action so advise the Secretary in writing and reference such modification in submissions made under subsection (b).

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—As used in this section—

''(1) the term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user; and

''(2) the term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

''(c) REGISTRATION OF NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) of this section shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment in any State registered with the Secretary under this section shall be subject to inspection under section 704, and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by one or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) FOREIGN ESTABLISHMENTS MAY REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, may register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) of this section and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), or (d) of this section shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which has not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

''(A) in the case of a tobacco product contained in the applicable list with respect to which a performance standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

''(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

''(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a performance standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

''(2) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

''(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1) of this subsection. A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

''(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

''(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such

resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY-EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of August 11, 1995, as defined by the Secretary by regulation shall, at least 90 days before making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall by regulation prescribe)—

''(A) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of August 11, 1995, that is in compliance with the requirements of this Act; and

''(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''(2) APPLICATION TO CERTAIN POST-AUGUST 11TH PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after August 11, 1995, and before the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act shall be submitted to the Secretary within 6 months after the date of enactment of that Act.

''SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking under section 907, 908, 909, or 910, or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefor) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefor.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 904, 907, 908, 909, or 910 or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) The Secretary may by regulation require that a tobacco product be restricted to sale, distribution, or use upon such conditions, including restrictions on the access to, and the advertising and promotion of, the tobacco product, as the Secretary may prescribe in such regulation if, because of its potentiality for harmful effect or the collateral measures necessary to its use, the Secretary determines that such regulation would be appropriate for the protection of the public health. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such condition may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) No restriction under paragraph (1) may prohibit the sale of any tobacco product in face-to face transactions by a specific category of retail outlets.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) The Secretary may, in accordance with subparagraph (B), 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 assure that the public health is protected and that the tobacco product is in compliance with this chapter.

''(B) The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford an advisory committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities; and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices.

''(2) EXEMPTIONS; VARIANCES.—

''(A) Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary 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—

''(i) 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 assure that the tobacco product will be in compliance with this chapter;

''(ii) 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 tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

''(iii) contain such other information as the Secretary shall prescribe.

''(B) The Secretary may refer to an advisory committee any petition submitted under subparagraph (A). The advisory committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

''(i) the date the petition was submitted to the Secretary under subparagraph (A); or

''(ii) the day after the petition was referred to an advisory committee,

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

''(C) 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 tobacco product will be in compliance 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 tobacco product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

''(D) 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 assure that the tobacco product will be in compliance with this chapter.

''(E) After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(3) Compliance with requirements under this subsection shall not be required before the period ending 3 years after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act.

''(f) EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from this chapter under such conditions as the Secretary may prescribe by regulation .

''(g) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco

products for research, testing, and demonstration purposes without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

"SEC. 907. PERFORMANCE STANDARDS.

''(a) IN GENERAL.—

''(1) FINDING REQUIRED.—The Secretary may adopt performance standards for a tobacco product if the Secretary finds that a performance standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(2) CONTENT OF PERFORMANCE STANDARDS.—A performance standard established under this section for a tobacco product—

''(A) shall include provisions to provide performance that is appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for the reduction or elimination of nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents or harmful components of the product; or

''(iii) relating to any other requirement under (B);

''(B) shall, where necessary to be appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

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

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d); and

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

''(3) PERIODIC RE-EVALUATION OF PERFORMANCE STANDARDS.—The Secretary shall provide for periodic evaluation of performance standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (2) by any person.

''(4) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall, to the maximum extent practicable—

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

''(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

''(C) 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 Secretary's judgment can make a significant contribution.

''(b) ESTABLISHMENT OF STANDARDS.—

''(1) NOTICE.—

(A) The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard for a tobacco product.

''(B) A notice of proposed rulemaking for the establishment or amendment of a performance standard for a tobacco product shall—

''(i) set forth a finding with supporting justification that the performance standard is appropriate for the protection of the public health;

''(ii) set forth proposed findings with respect to the risk of illness or injury that the performance standard is intended to reduce or eliminate; and

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

''(C) A notice of proposed rulemaking for the revocation of a performance standard shall set forth a finding with supporting justification that the performance standard is no longer necessary to be appropriate for the protection of the public health.

''(D) The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the performance standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

''(E) The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

''(A) After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a performance standard and after consideration of such comments and any report from an advisory committee, the Secretary shall—

''(i) promulgate a regulation establishing a performance standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

''(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(B) A regulation establishing a performance standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before one year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade.

''(3) SPECIAL RULE FOR STANDARD BANNING CLASS OF PRODUCT OR ELIMINATING NICOTINE CONTENT.—Because of the importance of a decision of the Secretary to issue a regulation establishing a performance standard—

''(A) eliminating all cigarettes, all smokeless tobacco products, or any similar class of tobacco products, or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

it is appropriate for the Congress to have the opportunity to review such a decision. Therefore, any such standard may not take effect before a date that is 2 years after the President notifies the Congress that a final regulation imposing the restriction has been issued.

''(4) AMENDMENT; REVOCATION.—

''(A) The Secretary, upon the Secretary's own initiative or upon petition of an interested person may by a regulation, promulgated in accordance with the requirements of paragraphs (1) and (2)(B) of this subsection, amend or revoke a performance standard.

''(B) The Secretary may declare a proposed amendment of a performance standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

''(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary—

''(A) may, on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a performance standard; or

''(B) shall, upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation to an advisory committee, for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this subparagraph to the advisory committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The advisory committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

"SEC. 908. NOTIFICATION AND OTHER REMEDIES

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in

such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

''SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) of this subsection continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

(1) Except as provided in paragraph (3), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a) of this section.

''SEC. 910. PREMARKET REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) PREMARKET APPROVAL REQUIRED.—

''(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any tobacco product that is not commercially marketed (other than for test marketing) in the United States as of August 11, 1995, is required unless the manufacturer has submitted a report under section 905(j), and the Secretary has issued an order that the tobacco product is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of August 11, 1995, that is in compliance with the requirements of this Act.

''(B) PRODUCTS INTRODUCED BETWEEN AUGUST 11, 1995, AND ENACTMENT OF THIS CHAPTER.—Subparagraph (A) does not apply to a tobacco product that—

''(i) was first introduced or delivered for introduction into interstate commerce for commerce for commercial distribution in the United States after August 11, 1995, and before the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act; and

''(ii) for which a report was submitted under section 905(j) within 6 months after such date,

until the Secretary issues an order that the tobacco product is substantially equivalent for purposes of this section or requires premarket approval.

''(2) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) For purposes of this section and section 905(j), the term 'substantially equivalent' or 'substantial equivalence' mean, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) For purposes of subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(3) HEALTH INFORMATION.—

''(A) As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application for premarket approval shall contain—

''(A) full reports of all information, published or known to or which should reasonably be known to the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any performance standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such performance standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERENCE TO ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) shall, upon the request of an applicant,

refer such application to an advisory committee and for submission (within such period as the Secretary may establish) of a report and recommendation respecting approval of the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b) of this section, the Secretary, after considering the report and recommendation submitted under paragraph (2) of such subsection, shall—

''(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

''(ii) deny approval of the application if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that one or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) An order approving an application for a tobacco product may require as a condition to such approval that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPROVAL.—The Secretary shall deny approval of an application for a tobacco product if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a performance standard in effect under section 907, compliance with which is a condition to approval of the application, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with one or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether approval of a tobacco product is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(5) BASIS FOR ACTION.—

''(A) For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include one or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a performance standard which is in effect under section 907, compliance with which was a condition to approval of the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the thirtieth day after the date upon which he receives notice of such withdrawal, obtain review thereof in accordance with subsection (e) of this section.

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an approved application would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

"SEC. 911. JUDICIAL REVIEW.

''(a) IN GENERAL.—Not later than 30 days after—

''(1) the promulgation of a regulation under section 907 establishing, amending, or revoking a performance standard for a tobacco product; or

''(2) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or order may file a petition with the United States Court of Appeals for the District of Columbia or for the circuit wherein such person resides or has his principal place of business for judicial review of such regulation or order. A copy of the petition shall be transmitted by the clerk of the court to the Secretary or other officer designated by the Secretary for that purpose. The Secretary shall file in the court the record of the proceedings on which the Secretary based the Secretary's regulation or order and each record or order shall contain a statement of the reasons for its issuance and the basis, on the record, for its issuance. For purposes of this section, the term 'record' means all notices and other matter published in the Federal Register with respect to the regulation or order reviewed, all information submitted to the Secretary with respect to such regulation or order, proceedings of any panel or advisory committee with respect to such regulation or order, any hearing held with respect to such regulation or order, and any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) COURT MAY ORDER SECRETARY TO MAKE ADDITIONAL FINDINGS.—If the petitioner applies to the court for leave to adduce additional data, views, or arguments respecting the regulation or order being reviewed and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceedings before the Secretary, the court may order the Secretary to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Secretary may modify the Secretary's findings, or make new findings by reason of the additional

data, views, or arguments so taken and shall file with the court such modified or new findings, and the Secretary's recommendation, if any, for the modification or setting aside of the regulation or order being reviewed, with the return of such additional data, views, or arguments.

''(c) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) of this section for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter. A regulation or order described in paragraph (1) or (2) of subsection (a) of this section shall not be affirmed if it is found to be unsupported by substantial evidence on the record taken as a whole.

''(d) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(e) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

''(f) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review under this section or under any other provision of law of a regulation or order issued under section 906, 907, 908, 909, 910, or 914, each such regulation or order shall contain a statement of the reasons for its issuance and the basis, in the record of the proceedings held in connection with its issuance, for its issuance.

''SEC. 912. POSTMARKET SURVEILLANCE

''(a) DISCRETIONARY SURVEILLANCE.—The Secretary may require a tobacco product manufacturer to conduct postmarket surveillance for a tobacco product of the manufacturer if the Secretary determines that postmarket surveillance of the tobacco product is necessary to protect the public health or is necessary to provide information regarding the health risks and other safety issues involving the tobacco product.

''(b) SURVEILLANCE APPROVAL.—Each tobacco product manufacturer required to conduct a surveillance of a tobacco product under subsection (a) of this section shall, within 30 days after receiving notice that the manufacturer is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of useful data or other information necessary to protect the public health. The Secretary may not approve such a protocol until it has been reviewed by an appropriately qualified scientific and technical review committee established by the Secretary.

''SEC. 913. REDUCED RISK TOBACCO PRODUCTS.

''(a) REQUIREMENTS.—

''(1) IN GENERAL.—For purposes of this section, the term 'reduced risk tobacco product' means a tobacco product designated by the Secretary under paragraph (2).

''(2) DESIGNATION.—

''(A) IN GENERAL.—A product may be designated by the Secretary as a reduced risk tobacco product if the Secretary finds that the product will significantly reduce harm to individuals caused by a tobacco product and is otherwise appropriate to protect public health, based on an application submitted by the manufacturer of the product (or other responsible person) that—

''(i) demonstrates through testing on animals and short-term human testing that use of such product results in ingestion or inhalation of a substantially lower yield of toxic substances than use of conventional tobacco products in the same category as the proposed reduced risk product; and

''(ii) if required by the Secretary, includes studies of the long-term health effects of the product.

If such studies are required, the manufacturer may consult with the Secretary regarding protocols for conducting the studies.

''(B) BASIS FOR FINDING.—In making the finding under subparagraph (A), the Secretary shall take into account—

''(i) the risks and benefits to the population as a whole, including both users of tobacco products and non-users of tobacco products;

''(ii) the increased or decreased likelihood that existing users of tobacco products will stop using such products including reduced risk tobacco products;

''(iii) the increased or decreased likelihood that those who do not use tobacco products will start to use such products, including reduced risk tobacco products; and

''(iv) the risks and benefits to consumers from the use of a reduced risk tobacco product as compared to the use of products approved under chapter V to reduce exposure to tobacco.

''(3) MARKETING REQUIREMENTS.—A tobacco product may be marketed and labeled as a reduced risk tobacco product if it—

''(A) has been designated as a reduced risk tobacco product by the Secretary under paragraph (2);

''(B) bears a label prescribed by the Secretary concerning the product's contribution to reducing harm to health; and

''(C) complies with requirements prescribed by the Secretary relating to marketing and advertising of the product, and other provisions of this chapter as prescribed by the Secretary.

''(b) REVOCATION OF DESIGNATION.—At any time after the date on which a tobacco product is designated as a reduced risk tobacco product under this section the Secretary may, after providing an opportunity for an informal hearing, revoke such designation if the Secretary determines, based on information not available at the time of the designation, that—

''(1) the finding made under subsection (a)(2) is no longer valid; or

''(2) the product is being marketed in violation of subsection (a)(3).

''(c) LIMITATION.—A tobacco product that is designated as a reduced risk tobacco product that is in compliance with subsection (a) shall not be regulated as a drug or device.

''(d) DEVELOPMENT OF REDUCED RISK TOBACCO PRODUCT TECHNOLOGY.—A tobacco product manufacturer shall provide written notice to the Secretary upon the development or acquisition by the manufacturer of any technology that would reduce the risk of a tobacco product to the health of the user for which the manufacturer is not seeking designation as a 'reduced risk tobacco product' under subsection (a).

''SEC. 914. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) ADDITIONAL REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act shall be construed as prohibiting a State or political subdivision thereof from adopting or enforcing a requirement applicable to a tobacco product that is in addition to, or more stringent than, requirements established under this chapter.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) Except as provided in subparagraph (B), no State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement applicable under the provisions of this chapter relating to performance standards, premarket approval, adulteration, misbranding, registration, reporting, good manufacturing standards, or reduced risk products.

''(B) Subparagraph (A) does not apply to requirements relating to the sale, use, or distribution of a tobacco product including requirements related to the access to, and the advertising and promotion of, a tobacco product.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''(c) WAIVERS.—Upon the application of a State or political subdivision thereof, the Secretary may, by regulation promulgated after notice and an opportunity for an oral hearing, exempt from subsection (a), under such conditions as may be prescribed in such regulation, a requirement of such State or political subdivision applicable to a tobacco product if—

''(1) the requirement is more stringent than a requirement applicable under the provisions described in subsection (a)(3) which would be applicable to the tobacco product if an exemption were not in effect under this subsection; or

''(2) the requirement—

''(A) is required by compelling local conditions; and

''(B) compliance with the requirement would not cause the tobacco product to be in violation of any applicable requirement of this chapter.

''SEC. 915. EQUAL TREATMENT OF RETAIL OUTLETS.

–''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.''.

SEC. 102. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) by inserting ''tobacco product,'' in subsection (a) after ''device,'';

(2) by inserting ''tobacco product,'' in subsection (b) after ''device,'';

(3) by inserting ''tobacco product,'' in subsection (c) after ''device,'';

(4) by striking ''515(f), or 519'' in subsection (e) and inserting ''515(f), 519, or 909'';

(5) by inserting ''tobacco product,'' in subsection (g) after ''device,'';

(6) by inserting ''tobacco product,'' in subsection (h) after ''device,'';

(7) by striking ''708, or 721'' in subsection (j) and inserting ''708, 721, 904, 905, 906, 907, 908, or 909'';

(8) by inserting ''tobacco product,'' in subsection (k) after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(J)(2).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 906(f), or 908;

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 906(f), or 909; or

''(C) to comply with a requirement under section 522 or 912.'';

(11) by striking ''device,'' in subsection (q)(2) and inserting ''device or tobacco product,'';

(12) by inserting ''or tobacco product'' in subsection (r) after ''device'' each time that it appears; and

(13) by adding at the end thereof the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).''.

(c) SECTION 303.—Section 303(f) (21 U.S.C. 333(f)) is amended—

(1) by amending the caption to read as follows:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) by inserting ''or tobacco products'' after ''devices'' in paragraph (1)(A);

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), and inserting after paragraph (2) the following:

''(3) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1).'';

(4) by striking ''assessed'' the first time it appears in subparagraph (A) of paragraph (4), as redesignated, and inserting ''assessed, or a no-tobacco-sale order may be imposed,'';

(5) by striking ''penalty'' in such subparagraph and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(6) by inserting after ''penalty,'' in subparagraph (B) of paragraph (4), as redesignated, the following: ''or the period to be covered by a no-tobacco-sale order,'';

(7) by adding at the end of such subparagraph the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.'';

(8) by adding at the end of paragraph (4), as redesignated, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(9) by striking ''(3)(A)'' in paragraph (5), as resdesignated, and inserting ''(4)(A)'';

(10) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears in such paragraph;

(11) by striking ''issued.'' in such paragraph and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(12) by striking ''paragraph (4)'' each place it appears in paragraph (6), as redesignated, and inserting ''paragraph (5)''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) by striking ''and'' before ''(D)'' in subsection (a)(2);

(2) by striking ''device.'' in subsection (a)(2) and inserting a comma and ''(E) Any adulterated or misbranded tobacco product.'';

(3) by inserting ''tobacco product,'' in subsection (d)(1) after ''device,'';

(4) by inserting ''or tobacco product'' in subsection (g)(1) after ''device'' each place it appears; and

(5) by inserting ''or tobacco product'' in subsection (g)(2)(A) after ''device'' each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

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

''(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.''.

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after ''device,'' each place it appears; and

(2) by inserting ''tobacco products,'' after ''devices,'' each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) by inserting ''tobacco products,'' in subsection (a)(1)(A) after ''devices,'' each place it appears;

(2) by inserting ''or tobacco products'' in subsection (a)(1)(B) after ''restricted devices'' each place it appears; and

(3) by inserting ''tobacco product,'' in subsection (b) after ''device,''.

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(i) SECTION 709.—Section 709 (21 U.S. C. 379) is amended by inserting ''or tobacco product'' after ''device''.

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) by inserting ''tobacco products,'' after ''devices,'' in subsection (a) the first time it appears;

(2) by inserting ''or subsection (j) of section 905'' in subsection (a) after ''section 510''; and

(3) by striking ''drugs or devices'' each time it appears in subsection (a) and inserting ''drugs, devices, or tobacco products'';

(4) by inserting ''tobacco product,'' in subsection (e)(1) after ''device,'';

(2) by redesignating paragraph (4) of subsection (e) as paragraph (5) and inserting after paragraph (3), the following:

''(4) Paragraph (1) does not apply to any tobacco product—

''(A) which does not comply with an applicable requirement of section 907 or 910; or

''(B) which under section 906(f) is exempt from either such section.

This paragraph does not apply if the Secretary has determined that the exportation of the tobacco product is not contrary to the public health and safety and has the approval of the country to which it is intended for export or the tobacco product is eligible for export under section 802.''.

(k) SECTION 802.—Section 802 (21 U.S.C. 382) is amended—

(1) by striking ''device—'' in subsection (a) and inserting ''device or tobacco product—'';

(2) by striking ''and'' after the semicolon in subsection (a)(1)(C);

(3) by striking subparagraph (C) of subsection (a)(2) and all that follows in that subsection and inserting the following:

''(C) is a banned device under section 516; or

''(3) which, in the case of a tobacco product—

''(A) does not comply with an applicable requirement of section 907 or 910; or

''(B) under section 906(f) is exempt from either such section,

is adulterated, misbranded, and in violation of such sections or Act unless the export of the drug, device, or tobacco product is, except as provided in subsection (f), authorized under subsection (b), (c), (d), or (e) of this section or section 801(e)(2) or 801(e)(4). If a drug, device, or tobacco product described in paragraph (1), (2), or (3) may be exported under subsection (b) and if an application for such drug or device under section 505, 515, or 910 of this Act or section 351 of the Public Health Service Act (42 U.S.C. 262) was disapproved, the Secretary shall notify the appropriate public health official of the country to which such drug, device, or tobacco product will be exported of such disapproval.'';

(4) by inserting ''or tobacco product'' in subsection (b)(1)(A) after ''device'' each time it appears;

(5) by inserting ''or tobacco product'' in subsection (c) after ''device'' and inserting ''or section 906(f)'' after ''520(g).'';

(6) by inserting ''or tobacco product'' in subsection (f) after ''device'' each time it appears; and

(7) by inserting ''or tobacco product'' in subsection (g) after ''device'' each time it appears.

(l) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting a comma and ''and tobacco products'' after ''devices''.

(m) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) thereof, shall take effect only upon the promulgation of final regulations by the Secretary—

(1) defining the term ''repeated violation'', as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time that constitute a repeated violation;

(2) providing for notice to the retailer of each violation at a particular retail outlet;

(3) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(4) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not considered to have been the site of repeated violations when the next violation occurs; and

(5) providing that good faith reliance on false identification does not constitute a violation of any minimum age requirement for the sale of tobacco products.

SEC. 103. CONSTRUCTION OF CURRENT REGULATIONS.

(a) IN GENERAL.—The final regulations promulgated by the Secretary in the August 28, 1996, issue of the Federal Register (62 Red. Reg. 44615-44618) and codified at part 897 of title 21, Code of Federal Regulations, are hereby deemed to be lawful and to have been lawfully promulgated by the Secretary under chapter IX and section 701 of the Federal Food, Drug, and Cosmetic Act, as amended by this Act, and not under chapter V of the Federal Food, Drug, and Cosmetic Act. The provisions of part 897 that are not in effect on the date of enactment of this Act shall take effect as in such part or upon such later date as determined by the Secretary by order. The Secretary shall amend the designation of authority in such regulations in accordance with this subsection.

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary or the Food and Drug Administration as binding precedent.

(1) The preamble to the proposed rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314-41372 (August 11, 1995)).

(2) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act;; (60 Fed. Reg. 41453-41787 (August 11, 1995)).

(3) The preamble to the final rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396-44615 (August 28, 1996)).

(4) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination;; (61 Fed. Reg. 44619-45318 (August 28, 1996)).

TITLE II—REDUCTIONS IN UNDERAGE TOBACCO USE

Subtitle A—Underage Use

SEC. 201. FINDINGS.

The Congress finds the following:

(1) Reductions in the underage use of tobacco products are critically important to the public health.

(2) Achieving this critical public health goal can be substantially furthered by increasing the price of tobacco products to discourage underage use if reduction targets are not achieved and by creating financial incentives for manufacturers to discourage youth from using their tobacco products.

(3) When reduction targets in underage use are not achieved on an industry-wide basis, the price increases that will result from an industry-wide assessment will provide an additional deterrence to youth tobacco use.

(4) Manufacturer-specific incentives that will be imposed if reduction targets are not met by a manufacturer provide a strong incentive for each manufacturer to make all efforts to discourage youth use of its brands and ensure the effectiveness of the industry-wide assessments.

SEC. 202. PURPOSE.

This title is intended to ensure that, in the event that other measures contained in this Act prove to be inadequate to produce substantial reductions in tobacco use by minors, tobacco companies will pay additional assessments. These additional assessments are designed to lower youth tobacco consumption in a variety of ways: by triggering further increases in the price of tobacco products, by encouraging tobacco companies to work to meet statutory targets for reductions in youth tobacco consumption, and providing support for further reduction efforts.

SEC. 203. GOALS FOR REDUCING UNDERAGE TOBACCO USE.

(a) GOALS.—As part of a comprehensive national tobacco control policy, the Secretary, working in cooperation with State, Tribal, and local governments and the private sector, shall take all actions under this Act necessary to ensure that the required percentage reductions in underage use of tobacco products set forth in this title are achieved.

(b) REQUIRED REDUCTIONS FOR CIGARETTES.—With respect to cigarettes, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Cigarette Use
Years 3 and 4	15 percent
Years 5 and 6	30 percent
Years 7, 8, and 9	50 percent
Year 10 and thereafter	60 percent

(c) REQUIRED REDUCTIONS FOR SMOKELESS TOBACCO.—With respect to smokeless tobacco products, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Smokeless Tobacco Use
Years 3 and 4	12.5 percent
Years 5 and 6	25 percent
Years 7, 8, and 9	35 percent
Year 10 and thereafter	45 percent

SEC. 204. LOOK-BACK ASSESSMENT.

(a) ANNUAL PERFORMANCE SURVEY.—Beginning no later than 1999 and annually thereafter the Secretary shall conduct a survey, in accordance with the methodology in subsection (d)(1), to determine—

(1) the percentage of all young individuals who used a type of tobacco product within the past 30 days; and

(2) the percentage of young individuals who identify each brand of each type of tobacco product as the usual brand of that type smoked or used within the past 30 days.

(b) ANNUAL DETERMINATION.—The Secretary shall make an annual determination, based on the annual performance survey conducted under subsection (a), of whether the required percentage reductions in underage use of tobacco products for a year have been achieved for the year involved. The determination shall be based on the annual percent prevalence of the use of tobacco products, for the industry as a whole and of particular manufacturers, by young individuals (as determined by the surveys conducted by the Secretary) for the year involved as compared to the base incidence percentages.

(c) CONFIDENTIALITY OF DATA.—The Secretary may conduct a survey relating to tobacco use involving minors. If the information collected in the course of conducting the annual performance survey results in the individual supplying the information or described in it to be identifiable, the information may not be used for any purpose other than the purpose for which it was supplied unless that individual (or that individual's guardian) consents to its use for such other purpose. The information may not be published or released in any other form if the individual supplying the information or described in it is identifiable unless that individual (or that individual's guardian) consents to its publication or release in other form.

(d) METHODOLGY.—

(1) IN GENERAL.—The survey required by subsection (a) shall—

(A) be based on a nationally representative sample of young individuals;

(B) be a household-based, in person survey (which may include computer-assisted technology);

(C) measure use of each type of tobacco product within the past 30 days;

(D) identify the usual brand of each type of tobacco product used within the past 30 days; and

(E) permit the calculation of the actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) based on the point estimates of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) from the annual performance survey.

(2) CRITERIA FOR DEEMING POINT ESTIMATES CORRECT.—Point estimates under paragraph (1)(E) are deemed conclusively to be correct and accurate for calculating actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a particular manufacturer) for the purpose of measuring compliance with percent reduction targets and calculating surcharges provided that the precision of estimates (based on sampling error) of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) is such that the 95-percent confidence interval around such point estimates is no more than plus or minus 1 percent.

(3) SURVEY DEEMED CORRECT, PROPER, AND ACCURATE.—A survey using the methodology required by this subsection is deemed conclusively to be proper, correct, and accurate for purposes of this Act.

(4) SECRETARY MAY ADOPT DIFFERENT METHODOLOGY.—The Secretary by notice and comment rulemaking may adopt a survey methodology that is different than the methodology described in paragraph (1) if the different methodology is at least as statistically precise as that methodology.

(e) INDUSTRY-WIDE NON-ATTAINMENT SURCHARGES.—

(1) SECRETARY TO DETERMINE INDUSTRY-WIDE NON-ATTAINMENT PERCENTAGE.—The Secretary shall determine the industry-wide non-attainment percentage for cigarettes and for smokeless tobacco for each calendar year.

(2) NON-ATTAINMENT SURCHARGE FOR CIGARETTES.—For each calendar year in which the percentage reduction in underage use required by section 203b) is not attained, the Secretary shall assess a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percent	$80,000,000 multiplied by the non-attainment percentage
More than 5% but not more than 10%	$400,000,000, plus $160,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%
More than 10%	$1,200,000,000, plus $240,000,000 multiplied by the non-attainment percentage in excess of 10%
More than 21.6%	$4,000,000,000

(3) NON-ATTAINMENT SURCHARGE FOR SMOKELESS TOBACCO.—For each year in which the percentage reduction in underage use required by section 203c) is not attained, the Secretary shall assess a surcharge on smokeless tobacco product manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percent	$8,000,000 multiplied by the non-attainment percentage
More than 5% but not more than 10%	$40,000,000, plus $16,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%
More than 10%	$120,000,000, plus $24,000,000 multiplied by the non-attainment percentage in excess of 10%
More than 21.6%	$400,000,000

(4) STRICT LIABILITY; JOINT AND SEVERAL LIABILITY.—Liability for any surcharge imposed under subsection (e) shall be—

(A) strict liability; and

(B) joint and several liability—

(i) among all cigarette manufacturers for surcharges imposed under subsection (e)(2); and

(ii) among all smokeless tobacco manufacturers for surcharges imposed under subsection (e)(3).

(5) SURCHARGE LIABILITY AMONG MANUFACTURERS.—A tobacco product manufacturer shall be liable under this subsection to one or more other manufacturers if the plaintiff tobacco product manufacturer establishes by a preponderance of the evidence that the defendant tobacco product manufacturer, through its acts or omissions, was responsible for a disproportionate share of the nonattainment surcharge as compared to the responsibility of the plaintiff manufacturer.

(6) EXEMPTIONS FOR SMALL MANUFACTURERS.—

(A) ALLOCATION BY MARKET SHARE.—The Secretary shall make such allocations according to each manufacturer's share of the domestic cigarette or domestic smokeless tobacco market, as appropriate, in the year for which the surcharge is being assessed, based on actual Federal excise tax payments.

(B) EXEMPTION.—In any year in which a surcharge is being assessed, the Secretary shall exempt from payment any tobacco product manufacturer with less than 1 percent of the domestic market share for a specific category of tobacco product unless the Secretary finds that the manufacturer's products are used by underage individuals at a rate equal to or greater than the manufacturer's total market share for the type of tobacco product.

(f) MANUFACTURER-SPECIFIC SURCHARGES.—

(1) REQUIRED PERCENTAGE REDUCTIONS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act shall reduce the percentage of young individuals who use such manufacturer's brand or brands as their usual brand in accordance with the required percentage reductions described under subsections (b) (with respect to cigarettes) and (c) (with respect to smokeless tobacco).

(2) APPLICATION TO LESS POPULAR BRANDS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act for which the base incidence percentage is equal to or less than the *de minimis* level shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand remains equal to or less than the *de minimis* level described in paragraph (4).

(3) NEW ENTRANTS.—Each manufacturer of a tobacco product which begins to manufacture a tobacco product after the date of the enactment of this Act shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand is equal to or less than the *de minimis* level.

(4) DE MINIMIS LEVEL DEFINED.—The *de minimis* level is equal to 1 percent prevalence of the use of each manufacturer's brands of tobacco product by young individuals (as determined on the basis of the annual performance survey conducted by the Secretary) for a year.

(5) TARGET REDUCTION LEVELS.—

(A) EXISTING MANUFACTURERS.— For purposes of this section, the target reduction level for each type of tobacco product for a year for a manufacturer is the product of the required percentage reduction for a type of tobacco product for a year and the manufacturers base incidence percentage for such tobacco product.

(B) NEW MANUFACTURERS; MANUFACTURERS WITH LOW BASE INCIDENCE PERCENTAGES.—With respect to a manufacturer which begins to manufacture a tobacco product after the date of the enactment of this Act or a manufacturer for which the baseline level as measured by the annual performance survey is equal to or less than the *de minimis* level described in paragraph (4), the base incidence percentage is the *de minimis* level, and the required percentage reduction in underage use for a type of tobacco product with respect to a manufacturer for a year shall be deemed to be the number of percentage points necessary to reduce the actual percent prevalence of young individuals identifying a brand of such tobacco product of such manufacturer as the usual brand smoked or used for such year to the *de minimis* level.

(6) SURCHARGE AMOUNT.—

(A) IN GENERAL.—If the Secretary determines that the required percentage reduction in use of a type of tobacco product has not been achieved by such manufacturer for a year, the Secretary shall impose a surcharge on such manufacturer under this paragraph.

(B) AMOUNT.—The amount of the manufacturer-specific surcharge for a type of tobacco product for a year under this paragraph is $1,000, multiplied by the number of young individuals for which such firm is in noncompliance with respect to its target reduction level.

(C) DETERMINATION OF NUMBER OF YOUNG INDIVIDUALS.—For purposes of subparagraph (B) the number of young individuals for which a manufacturer is in noncompliance for a year shall be determined by the Secretary from the annual performance survey and shall be calculated based on the estimated total number of young individuals in such year and the actual percentage prevalence of young individuals identifying a brand of such tobacco product of such manufacturer as the usual brand smoked or used in such year as compared to such manufacturer's target reduction level for the year.

(7) DE MINIMIS RULE.—The Secretary may not impose a surcharge on a manufacturer for a type of tobacco product for a year if the Secretary determines that actual percent prevalence of young individuals identifying that manufacturer's brands of such tobacco product as the usual products smoked or used for such year is less than 1 percent.

(g) SURCHARGES TO BE ADJUSTED FOR INFLATION.—

(1) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, each dollar amount in the tables in subsections (e)(2), (e)(3), and (f)(6)(B) shall be increased by the inflation adjustment.

(2) INFLATION ADJUSTMENT.—For purposes of paragraph (1), the inflation adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for the calendar year 1998.

(3) CPI.—For purposes of paragraph (2), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(4) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(h) METHOD OF SURCHARGE ASSESSMENT.—The Secretary shall assess a surcharge for a specific calendar year on or before May 1 of the subsequent calendar year. Surcharge payments shall be paid on or before July 1 of the year in which they are assessed. The Secretary may establish, by regulation, interest at a rate up to 3 times the prevailing prime rate at the time the surcharge is assessed, and additional charges in an amount up to 3 times the surcharge, for late payment of the surcharge.

(i) BUSINESS EXPENSE DEDUCTION.—Any surcharge paid by a tobacco product manufacturer under this section shall not be deductible as an ordinary and necessary business expense or otherwise under the Internal Revenue Code of 1986.

(j) APPEAL RIGHTS.—The amount of any surcharge is committed to the sound discretion of the Secretary and shall be subject to judicial review by the United States Court of Appeals for the District of Columbia Circuit, based on the arbitrary and capricious standard of section 706(2)(A) of title 5, United States Code. Notwithstanding any other provisions of law, no court shall have authority to stay any surcharge payments due the Secretary under this Act pending judicial review.

(k) RESPONSIBILITY FOR AGENTS.—In any action brought under this subsection, a tobacco product manufacturer shall be held responsible for any act or omission of its attorneys, advertising agencies, or other agents that contributed to that manufacturer's responsibility for the surcharge assessed under this section.

SEC. 205. DEFINITIONS.

In this subtitle:

(1) BASE INCIDENCE PERCENTAGE.—The term ''base incidence percentage'' means, with respect to each type of tobacco product, the percentage of young individuals determined to have used such tobacco product in the first annual performance survey for 1999.

(2) MANUFACTURERS BASE INCIDENCE PERCENTAGE.—The term ''manufacturers base incidence percentage'' is, with respect to each type of tobacco product, the percentage of young individuals determined to have identified a brand of such tobacco product of such manufacturer as the usual brand smoked or used in the first annual performance survey for 1999.

(3) YOUNG INDIVIDUALS.—The term ''young individuals'' means individuals who are over 11 years of age and under 18 years of age.

(4) CIGARETTE MANUFACTURERS.—The term ''cigarette manufacturers'' means manufacturers of cigarettes sold in the United States.

(5) NON-ATTAINMENT PERCENTAGE FOR CIGARETTES.—The term ''non-attainment percentage for cigarettes'' means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of cigarettes is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of cigarettes is greater than the base incidence percentage, adding—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(6) NON-ATTAINMENT PERCENTAGE FOR SMOKELESS TOBACCO PRODUCTS.—The term ''non-attainment percentage for smokeless tobacco products'' means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is greater than the base incidence percentage, by adding—

(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(7) SMOKELESS TOBACCO PRODUCT MANUFACTURERS.—The term ''smokeless tobacco product manufacturers'' means manufacturers of smokeless tobacco products sold in the United States.

Subtitle B—State Retail Licensing and Enforcement Incentives

SEC. 231. STATE RETAIL LICENSING AND ENFORCEMENT BLOCK GRANTS.

(a) IN GENERAL.—The Secretary shall make State retail licensing and enforcement block grants in accordance with the provisions of this section. There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund $200,000,000 for each fiscal year to carry out the provisions of this section.

(b) REQUIREMENTS.—

(1) ESTABLISHMENT.—The Secretary shall provide a block grant, based on population, under this subtitle to each State that has in effect a law that—

(A) provides for the licensing of entities engaged in the sale or distribution of tobacco products directly to consumers;

(B) makes it illegal to sell or distribute tobacco products to individuals under 18 years of age; and

(C) meets the standards described in this section.

(2) STATE AGREEMENT REQUIRED.—In order to receive a block grant under this section, a State—

(A) shall enter into an agreement with the Secretary to assume responsibilities for the implementation and enforcement of a tobacco retailer licensing program;

(B) shall prohibit retailers from selling or otherwise distributing tobacco products to individuals under 18 years of age in accordance with the Youth Access Restrictions regulations promulgated by the Secretary (21 C.F.R. 897.14(a) and (b));

(C) shall make available to appropriate Federal agencies designated by the Secretary requested information concerning retail establishments involved in the sale or distribution of tobacco products to consumers; and

(D) shall establish to the satisfaction of the Secretary that it has a law or regulation that includes the following:

(i) LICENSURE; SOURCES; AND NOTICE.—A requirement for a State license for each retail establishment involved in the sale or distribution of tobacco products to consumers. A requirement that a retail establishment may purchase tobacco products only from Federally-licensed manufacturers, importers, or wholesalers. A program under which notice is provided to such establishments and their employees of all licensing requirements and responsibilities under State and Federal law relating to the retail distribution of tobacco products.

(ii) PENALTIES.—

(I) CRIMINAL.—Criminal penalties for the sale or distribution of tobacco products to a consumer without a license.

(II) CIVIL.—Civil penalties for the sale or distribution of tobacco products in violation of State law, including graduated fines and suspension or revocation of licenses for repeated violations.

(III) OTHER.—Other programs, including such measures as fines, suspension of driver's license privileges, or community service requirements, for underage youths who possess, purchase, or attempt to purchase tobacco products.

(iii) JUDICIAL REVIEW.—Judicial review procedures for an action of the State suspending, revoking, denying, or refusing to renew any license under its program.

(c) ENFORCEMENT.—

(1) UNDERTAKING.—Each State that receives a grant under this subtitle shall undertake to enforce compliance with its tobacco retailing licensing program in a manner that can reasonably be expected to reduce the sale and distribution of tobacco products to individuals under 18 years of age. If the Secretary determines that a State is not enforcing the law in accordance with such an undertaking, the Secretary may withhold a portion of any unobligated funds under this section otherwise payable to that State.

(2) ACTIVITIES AND REPORTS REGARDING ENFORCEMENT.—A State that receives a grant under this subtitle shall—

(A) conduct monthly random, unannounced inspections of sales or distribution outlets in the State to ensure compliance with a law prohibiting sales of tobacco products to individuals under 18 years of age;

(B) annually submit to the Secretary a report describing in detail—

(i) the activities carried out by the State to enforce underage access laws during the fiscal year;

(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18 years;

(iii) how the inspections described in subparagraph (A) were conducted and the methods used to identify outlets, with appropriate protection for the confidentiality of information regarding the timing of inspections and other investigative techniques whose effectiveness depends on continued confidentiality; and

(iv) the identity of the single State agency designated by the Governor of the State to be responsible for the implementation of the requirements of this section.

(3) MINIMUM INSPECTION STANDARDS.—Inspections conducted by the State shall be conducted by the State in such a way as to ensure a scientifically sound estimate (with a 95 percent confidence interval that such estimates are accurate to within plus or minus 3 percentage points), using an accurate list of retail establishments throughout the State. Such inspections shall cover a range of outlets (not preselected on the basis of prior violations) to measure overall levels of compliance as well as to identify violations. The sample must reflect the distribution of the population under the age of 18 years throughout the State and the distribution of the outlets throughout the State accessible to youth. Except as provided in this paragraph, any reports required by this paragraph shall be made public. As used in this paragraph, the term ''outlet'' refers to any location that sells at retail or otherwise distributes tobacco products to consumers, including to locations that sell such products over-the-counter.

(d) NONCOMPLIANCE.—

(1) INSPECTIONS.—The Secretary shall withhold from any State that fails to meet the requirements of subsection (b) in any calendar year an amount equal to 5 percent of the amount otherwise payable under this subtitle to that State for the next fiscal year.

(2) COMPLIANCE RATE.—The Secretary shall withhold from any State that fails to demonstrate a compliance rate of—

(A) at least the annual compliance targets that were negotiated with the Secretary under section 1926 of the Public Health Service Act (42 U.S.C. 300x—26) as such section was in effect before its repeal by this Act through the third fiscal year after the date of enactment of this Act;

(B) at least 80 percent in the fourth fiscal year after such date;

(C) at least 85 percent in the fifth and sixth fiscal years after such date; and

(D) at least 90 percent in every fiscal year beginning with the seventh fiscal year after such date,

an amount equal to one percentage point for each percentage point by which the State failed to meet the percentage set forth in this subsection for that year from the amount otherwise payable under this subtitle for that fiscal year.

(e) RELEASE AND DISBURSEMENT.—

(1) Upon notice from the Secretary that an amount payable under this section has been ordered withheld under subsection (d), a State may petition the Secretary for a release and disbursement of up to 75 percent of the amount withheld, and shall give timely written notice of such petition to the attorney general of that State and to all tobacco product manufacturers.

(2) The agency shall conduct a hearing on such a petition, in which the attorney general of the State may participate and be heard.

(3) The burden shall be on the State to prove, by a preponderance of the evidence, that the release and disbursement should be made. The Secretary's decision on whether to grant such a release, and the amount of any such disbursement, shall be based on whether—

(A) the State presents scientifically sound survey data showing that the State is making significant progress toward reducing the use of tobacco products by individuals who have not attained the age of 18 years;

(B) the State presents scientifically-based data showing that it has progressively decreased the availability of tobacco products to such individuals;

(C) the State has acted in good faith and in full compliance with this Act, and any rules or regulations promulgated under this Act;

(D) the State provides evidence that it plans to improve enforcement of these laws in the next fiscal year; and

(E) any other relevant evidence.

(4) A State is entitled to interest on any withheld amount released at the average United States 52-Week Treasury Bill rate for the period between the withholding of the amount and its release.

(5) Any State attorney general or tobacco product manufacturer aggrieved by a final decision on a petition filed under this subsection may seek judicial review of such decision within 30 days in the United States Court of Appeals for the District of Columbia Circuit. Unless otherwise specified in this Act, judicial review under this section shall be governed by sections 701 through 706 of title 5, United States Code.

(6) No stay or other injunctive relief enjoining a reduction in a State's allotment pending appeal or otherwise may be granted by the Secretary or any court.

(f) NON-PARTICIPATING STATES LICENSING REQUIREMENTS.—For retailers in States which have not established a licensing program under subsection (a), the Secretary shall promulgate regulations establishing Federal retail licensing for retailers engaged in tobacco sales to consumers in those States. The Secretary may enter into agreements with States for the enforcement of those regulations. A State that enters into such an agreement shall receive a grant under this section to reimburse it for costs incurred in carrying out that agreement.

(g) DEFINITION.—For the purposes of this section, the term ''first applicable fiscal year'' means the first fiscal year beginning after the fiscal year in which funding is made available to the States under this section.

SEC. 232. BLOCK GRANTS FOR COMPLIANCE BONUSES.

(a) IN GENERAL.—The Secretary shall make block grants to States determined to be eligible under subsection (b) in accordance with the provisions of this section. There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund $100,000,000 for each fiscal year to carry out the provisions of this section.

(b) ELIGIBLE STATES.—To be eligible to receive a grant under subsection (a), a State 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; and

(2) with respect to the year involved, demonstrate to the satisfaction of the Secretary that fewer than 5 percent of all individuals under 18 years of age who attempt to purchase tobacco products in the State in such year are successful in such purchase.

(c) PAYOUT.—

(1) PAYMENT TO STATE.—If one or more States are eligible to receive a grant under this section for any fiscal year, the amount payable for that fiscal year shall be apportioned among such eligible States on the basis of population.

(2) YEAR IN WHICH NO STATE RECEIVES GRANT.—If in any fiscal year no State is eligible to receive a grant under this section, then the Secretary may use not more than 25 percent of the amount appropriated to carry out this section for that fiscal year to support efforts to improve State and local enforcement of laws regulating the use, sale, and distribution of tobacco products to individuals under the age of 18 years.

(3) AMOUNTS AVAILABLE WITHOUT FISCAL YEAR LIMITATION.—Any amount appropriated under this section remaining unexpended and unobligated at the end of a fiscal year shall remain available for obligation and expenditure in the following fiscal year.

SEC. 233. CONFORMING CHANGE.

Section 1926 of the Public Health Service Act (42 U.S.C. 300x—26) is hereby repealed.

Subtitle C—Tobacco Use Prevention and Cessation Initiatives

SEC. 261. TOBACCO USE PREVENTION AND CESSATION INITIATIVES.

Title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by adding at the end the following:

''PART D—TOBACCO USE PREVENTION AND CESSATION INITIATIVES

''SUBPART I—CESSATION AND COMMUNITY-BASED PREVENTION BLOCK GRANTS

''SEC. 1981. FUNDING FROM TOBACCO SETTLEMENT TRUST FUND.

''(a) IN GENERAL.—From amounts contained in the Public Health Allocation Account under section 451(b)(2)(A) and (C) of the National Tobacco Policy and Youth Smoking Reduction Act for a fiscal year, there are authorized to be appropriated (under subsection (d) of such section) to carry out this subpart—

(1) for cessation activities, the amounts appropriated under section 451 (b)(2)(A); and

(2) for prevention and education activities, the amounts appropriated under section 451 (b)(2)(C).

''(b) NATIONAL ACTIVITIES.—

''(1)Not more than 10 percent of the amount made available for any fiscal year under subsection (a) shall be made available to the Secretary to carry out activities under section 1981B and 1981D(d).

''(2) Not more than 10 percent of the amount available for any fiscal year under subsection (a)(1) shall be available to the Secretary to carry out activities under section 1981D(d).

''SEC. 1981A. ALLOTMENTS.

''(a) AMOUNT.—

''(1) IN GENERAL.—From the amount made available under section 1981 for any fiscal year the Secretary, acting through the Director of the Centers for Disease Control and Prevention (referred to in this subpart as the 'Director'), shall allot to each State an amount based on a formula to be developed by the Secretary that is based on the tobacco prevention and cessation needs of each State including the needs of the State's minority populations.

''(2) MINIMUM AMOUNT.—In determining the amount of allotments under paragraph (1), the Secretary shall ensure that no State receives less than ½ of 1 percent of the amount available under section 1981(a) for the fiscal year involved.

''(b) REALLOTMENT.—To the extent that amounts made available under section 1981 for a fiscal year are not otherwise allotted to States because—

''(1) 1 or more States have not submitted an application or description of activities in accordance with section 1981D for the fiscal year;

''(2) 1 or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

''(3) the Secretary has determined that the State is not in compliance with this subpart, and therefore is subject to penalties under section 1981D(g);

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

''(c) PAYMENTS.—

''(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall utilize the funds made available under this section to make payments to States under allotments under this subpart as provided for under section 203 of the Intergovernmental Cooperation Act of 1968.

''(2) FEDERAL GRANTEES.—From amounts available under section 1981(b)(2), the Secretary may make grants, or supplement existing grants, to entities eligible for funds under the programs described in section 1981C(d)(1) and (10) to enable such entities to carry out smoking cessation activities under this subpart, except not less than 25 percent of this amount shall be used for the program described in 1981C(d)(6).

''(3) AVAILABILITY OF FUNDS.—Any amount paid to a State for a fiscal year under this subpart and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such payment was made.

''(d) REGULATIONS.—Not later than 9 months after the date of enactment of this part, the Secretary shall promulgate regulations to implement this subpart. This subpart shall take effect regardless of the date on which such regulations are promulgated.

''SEC. 1981B. TECHNICAL ASSISTANCE AND PROVISION OF SUPPLIES AND SERVICES IN LIEU OF FUNDS.

''(a) TECHNICAL ASSISTANCE.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, without charge to a State receiving an allotment under section 1981A, provide to such State (or to any public or nonprofit private entity within the State) technical assistance and training with respect to the planning, development, operation, and evaluation of any program or service carried out pursuant to the program involved. The Secretary may provide such technical assistance or training directly, through contract, or through grants.

''(b) PROVISION OF SUPPLIES AND SERVICE IN LIEU OF GRANT FUNDS.—The Secretary, at the request of a State, may reduce the amount of payments to the State under section 1981A(c) by—

''(1) the fair market value of any supplies or equipment furnished by the Secretary to the State; and

''(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Federal Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee;

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 1981C. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

''SEC. 1981C. PERMITTED USERS OF CESSATION BLOCK GRANTS AND OF COMMUNITY-BASED PREVENTION BLOCK GRANTS.

''(a) TOBACCO USE CESSATION ACTIVITIES.—Except as provided in subsections (d) and (e), amounts described in subsection (a)(1) may be used for the following:

''(1) Evidence-based cessation activities described in the plan of the State, submitted in accordance with section 1981D, including—

''(A) evidence-based programs designed to assist individuals, especially young people and minorities who have been targeted by tobacco product manufacturers, to quit their use of tobacco products;

''(B) training in cessation intervention methods for health plans and health professionals, including physicians, nurses, dentists, health educators, public health professionals, and other health care providers;

''(C) programs to encourage health insurers and health plans to provide coverage for evidence-based tobacco use cessation interventions and therapies, except that the use of any funds under this clause to offset the cost of providing a smoking cessation benefit shall be on a temporary demonstration basis only;

''(D) culturally and linguistically appropriate programs targeted toward minority and low-income individuals, individuals residing in medically underserved areas, uninsured individuals, and pregnant women;

''(E) programs to encourage employer-based wellness programs to provide evidence-based tobacco use cessation intervention and therapies; and

''(F) programs that target populations whose smoking rate is disproportionately high in comparison to the smoking rate population-wide in the State.

''(2) Planning, administration, and educational activities related to the activities described in paragraph (1).

''(3) The monitoring and evaluation of activities carried out under paragraphs (1) and (2), and reporting and disseminating resulting information to health professionals and the public.

''(4) Targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

''(b) STATE AND COMMUNITY ACTION ACTIVITIES.—Except as provided in subsections (d) and (e), amounts described in subsection (a)(2) may be used for the following:

''(1) Evidence-based activities for tobacco use prevention and control described in the plan of the State, submitted in accordance with section 1981D, including—

''(A) State and community initiatives;

''(B) community-based prevention programs, similar to programs currently funded by NIH;

''(C) programs focused on those populations within the community that are most at risk to use tobacco products or that have been targeted by tobacco advertising or marketing;

''(D) school programs to prevent and reduce tobacco use and addiction, including school programs focused in those regions of the State with high smoking rates and targeted at populations most at risk to start smoking;

''(E) culturally and linguistically appropriate initiatives targeted towards minority and low-income individuals, individuals residing in medically underserved areas, and women of child-bearing age;

''(F) the development and implementation of tobacco-related public health and health promotion campaigns and public policy initiatives;

''(G) assistance to local governmental entities within the State to conduct appropriate anti-tobacco activities.

''(H) strategies to ensure that the State's smoking prevention activities include minority, low-income, and other undeserved populations; and

''(I) programs that target populations whose smoking rate is disproportionately high in comparison to the smoking rate population-wide in the State.

''(2) Planning, administration, and educational activities related to the activities described in paragraph (1).

''(3) The monitoring and evaluation of activities carried out under paragraphs (1) and (2), and reporting and disseminating resulting information to health professionals and the public.

''(4) Targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

''(c) COORDINATION.—Tobacco use cessation and community-based prevention activities permitted under subsections (b) and (c) may be conducted in conjunction with recipients of other Federally—funded programs within the State, including—

''(1) the special supplemental food program under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

''(2) the Maternal and Child Health Services Block Grant program under title V of the Social Security Act (42 U.S.C. 701 et seq.);

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

''(4) the school lunch program under the National School Lunch Act (42 U.S.C. 1751 et seq.);

''(5) an Indian Health Service Program;

''(6) the community, migrant, and homeless health centers program under section 330 of the Public Health Service Act (42 U.S.C. 254b);

''(7) state-initiated smoking cessation programs that include provisions for reimbursing individuals for medications or therapeutic techniques;

''(8) the substance abuse and mental health services block grant program, and the preventive health services block grant program, under title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.);

''(9) the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

''(10) programs administered by the Department of Defense and the Department of Veterans Affairs.

''(d) LIMITATION.—A State may not use amounts paid to the State under section 1981A(c) to—

''(1) make cash payments except with appropriate documentation to intended recipients of tobacco use cessation services;

''(2) fund educational, recreational, or health activities not based on scientific evidence that the activity will prevent smoking or lead to success of cessation efforts

''(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

''(4) satisfy any requirement for the expenditure of non-Federal funds as a condition of the receipt of Federal funds; or

''(5) provide financial assistance to any entity other than a public or nonprofit private entity or a private entity consistent with subsection (b)(1)(C).

This subsection shall not apply to the support of targeted pilot programs that use innovative and experimental new methodologies and include an evaluation component.

''(e) ADMINISTRATION.—Not more than 5 percent of the allotment of a State for a fiscal year under this subpart may be used by the State to administer the funds paid to the State under section 1981A(c). The State shall pay from non-Federal sources the remaining costs of administering such funds.

''SEC. 1981D. ADMINISTRATIVE PROVISIONS.

''(a) APPLICATION.—The Secretary may make payments under section 1981A(c) to a State for a fiscal year only if—

''(1) the State submits to the Secretary an application, in such form and by such date as the Secretary may require, for such payments;

''(2) the application contains a State plan prepared in a manner consistent with section 1905(b) and in accordance with tobacco-related guidelines promulgated by the Secretary;

''(3) the application contains a certification that is consistent with the certification required under section 1905(c); and

''(4) the application contains such assurances as the Secretary may require regarding the compliance of the State with the requirements of this subpart (including assurances regarding compliance with the agreements described in subsection (c)).

''(b) STATE PLAN.—A State plan under subsection (a)(2) shall be developed in a manner consistent with the plan developed under section 1905(b) except that such plan—

''(1) with respect to activities described in section 1981C(b)—

''(A) shall provide for tobacco use cessation intervention and treatment consistent with the tobacco use cessation guidelines issued by the Agency for Health Care Policy and Research, or another evidence-based guideline approved by the Secretary, or treatments using drugs, human biological products, or medical devices approved by the Food and Drug Administration, or otherwise legally marketed under the Federal Food, Drug and Cosmetic Act for use as tobacco use cessation therapies or aids;

''(B) may, to encourage innovation and experimentation with new methodologies, provide for or may include a targeted pilot program with an evaluation component;

''(C) shall provide for training in tobacco use cessation intervention methods for health plans and health professionals, including physicians, nurses, dentists, health educators, public health professionals, and other health care providers;

''(D) shall ensure access to tobacco use cessation programs for rural and underserved populations;

''(E) shall recognize that some individuals may require more than one attempt for successful cessation; and

''(F) shall be tailored to the needs of specific populations, including minority populations; and

''(2) with respect to State and community-based prevention activities described in section 1981C(c), shall specify the activities authorized under such section that the State intends to carry out.

''(c) CERTIFICATION.—The certification referred to in subsection (a)(3) shall be consistent with the certification required under section 1905(c), except that

''(1) the State shall agree to expend payments under section 1981A(c) only for the activities authorized in section 1981C;

''(2) paragraphs (9) and (10) of such section shall not apply; and

''(3) the State is encouraged to establish an advisory committee in accordance with section 1981E.

''(d) REPORTS, DATA, AND AUDITS.—The provisions of section 1906 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part, except that the data sets referred to in section 1905(a)(2) shall be developed for uniformly defining levels of youth and adult use of tobacco products, including uniform data for racial and ethnic groups, for use in the reports required under this subpart.

''(e) WITHHOLDING.—The provisions of 1907 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

''(f) NONDISCRIMINATION.—The provisions of 1908 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

''(g) CRIMINAL PENALTIES.—The provisions of 1909 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

''SEC. 1981E. STATE ADVISORY COMMITTEE.

''(a) IN GENERAL.—For purposes of sections 1981D(c)(3), an advisory committee is in accordance with this section if such committee meets the conditions described in this subsection.

''(b) DUTIES.—The recommended duties of the committee are—

''(1) to hold public hearings on the State plans required under sections 1981D; and

''(2) to make recommendations under this subpart regarding the development and implementation of such plans, including recommendations on—

''(A) the conduct of assessments under the plans;

''(B) which of the activities authorized in section 1981C should be carried out in the State;

''(C) the allocation of payments made to the State under section 1981A(c);

''(D) the coordination of activities carried out under such plans with relevant programs of other entities; and

''(E) the collection and reporting of data in accordance with section 1981D.

''(c) COMPOSITION.—

''(1) IN GENERAL.—The recommended composition of the advisory committee is members of the general public, such officials of

the health departments of political subdivisions of the State, public health professionals, teenagers, minorities, and such experts in tobacco product research as may be necessary to provide adequate representation of the general public and of such health departments, and that members of the committee shall be subject to the provisions of sections 201, 202, and 203 of title 18, United States Code.

''(2) REPRESENTATIVES.—With respect to compliance with paragraph (1), the membership of the advisory committee may include representatives of community-based organizations (including minority community-based organizations), schools of public health, and entities to which the State involved awards grants or contracts to carry out activities authorized under section 1981C.

''SUBPART II—TOBACCO-FREE COUNTER-ADVERTISING PROGRAMS

''SEC. 1982. FEDERAL-STATE COUNTER-ADVERTISING PROGRAMS.

''(a) NATIONAL CAMPAIGN.—

''(1) IN GENERAL.—The Secretary shall conduct a national campaign to reduce tobacco usage through media-based (such as counter-advertising campaigns) and nonmedia-based education, prevention and cessation campaigns designed to discourage the use of tobacco products by individuals, to encourage those who use such products to quit, and to educate the public about the hazards of exposure to environmental tobacco smoke.

''(2) REQUIREMENTS.—The national campaign under paragraph (1) shall—

''(A) target those populations that have been targeted by tobacco industry advertising using culturally and linguistically appropriate means;

''(B) include a research and evaluation component; and

''(C) be designed in a manner that permits the campaign to be modified for use at the State or local level.

''(b) ESTABLISHMENT OF AN ADVISORY BOARD.—

''(1) IN GENERAL.—The Secretary shall establish a board to be known as the 'National Tobacco Free Education Advisory Board' (referred to in this section as the 'Board') to evaluate and provide long range planning for the development and effective dissemination of public informational and educational campaigns and other activities that are part of the campaign under subsection (a).

''(2) COMPOSITION.—The Board shall be composed of—

''(A) 9 non-Federal members to be appointed by the President, after consultation and agreement with the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the Health or Representatives, of which—

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

''(ii) at least 3 of whom shall be individuals who hold positions of leadership in major public health organizations, including minority public health organizations; and

''(iii) at least 3 of whom shall be individuals recognized as experts in the field of advertising and marketing, of which—

''(I) 1 member shall have specific expertise in advertising and marketing to children and teens; and

''(II) 1 member shall have expertise in marketing research and evaluation; and

''(B) the Surgeon General, the Director of the Centers for Disease Control and Prevention, or their designees, shall serve as an ex officio members of the Board.

''(3) TERMS AND VACANCIES.—The members of the Board shall serve for a term of 3 years. Such terms shall be staggered 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) 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.

''(5) AWARDS.—In carrying out subsection (a), the Secretary may—

''(A) enter into contracts with or award grants to eligible entities to develop messages and campaigns designed to prevent and reduce the use of tobacco products that are based on effective strategies to affect behavioral changes in children and other targeted populations, including minority populations;

''(B) enter into contracts with or award grants to eligible entities to carry out public informational and educational activities designed to reduce the use of tobacco products;

''(6) POWERS AND DUTIES.—The Board may—

''(A) 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; and

''(B) secure directly from any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.

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

''(1) be a—

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

''(B) private or nonprofit private entity that—

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

''(II) has a demonstrated record of working effectively to reduce tobacco product use; or

''(III) has expertise in conducting a multi-media communications campaign; and

''(ii) has expertise in developing strategies that affect behavioral changes in children and other targeted populations, including minority populations;

''(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 this section will be used in accordance with subsection (c); and

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

''(d) USE OF FUNDS.—An entity that receives funds under this section shall use amounts provided under the grant or contract to conduct multi-media and non-media public educational, informational, marketing and promotional campaigns that are designed to discourage and de-glamorize the use of tobacco products, encourage those using such products to quit, and educate the public about the hazards of exposure to environmental tobacco smoke. Such amounts may be used to design and implement such activities and shall be used to conduct research concerning the effectiveness of such programs.

''(e) NEEDS OF CERTAIN POPULATIONS.—In awarding grants and contracts under this section, the Secretary shall take into consideration the needs of particular populations, including minority populations, and use methods that are culturally and linguistically appropriate.

''(f) COORDINATION.—The Secretary shall ensure that programs and activities under this section are coordinated with programs and activities carried out under this title.

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

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

''(2) no more than 20 percent of the amount made available under subsection (h) for each fiscal year shall be used specifically for the development of new messages and campaigns;

''(3) the remainder shall be used specifically to place media messages and carry out other dissemination activities described in subsection (d); and

''(4) half of 1 percent for administrative costs and expenses.

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

''PART E—REDUCING YOUTH SMOKING AND TOBACCO-RELATED DISEASES THROUGH RESEARCH

''SEC. 1991. FUNDING FROM TOBACCO SETTLEMENT TRUST FUND.

No expenditures shall be made under sections 451(b) or (c)—

''(1) for the National Institutes of Health during any fiscal year in which the annual amount appropriated for such Institutes is less than the amount so appropriated for the prior fiscal year;

''(2) for the Centers for Disease Control and Prevention during any fiscal year in which the annual amount appropriated for such Centers is less than the amount so appropriated for the prior fiscal year; or

''(3) for the Agency for Health Care Policy and Research during any fiscal year in which the annual amount appropriated for such Agency is less than the amount so appropriated for the prior fiscal year.

''SEC. 1991A. STUDY BY THE INSTITUTE OF MEDICINE.

''(a) CONTRACT.—Not later than 60 days after the date of enactment of this title, the Secretary shall enter into a contract with the Institute of Medicine for the conduct of a study on the framework for a research agenda and research priorities to be used under this part.

''(b) CONSIDERATIONS.—

''(1) IN GENERAL.—In developing the framework for the research agenda and research priorities under subsection (a) the Institute of Medicine shall focus on increasing knowledge concerning the biological, social, behavioral, public health, and community factors involved in the prevention of tobacco use, reduction of tobacco use, and health consequences of tobacco use.

''(2) SPECIFIC CONSIDERATIONS.—In the study conducted under subsection (a), the Institute of Medicine shall specifically include research on—

''(A) public health and community research relating to tobacco use prevention methods, including public education, media, community strategies;

''(B) behavioral research relating to addiction, tobacco use, and patterns of smoking, including risk factors for tobacco use by children, women, and racial and ethnic minorities;

''(C) health services research relating to tobacco product prevention and cessation treatment methodologies;

''(D) surveillance and epidemiology research relating to tobacco;

''(E) biomedical, including clinical, research relating to prevention and treatment of tobacco-related diseases, including a focus on minorities, including racial and ethnic minorities;

''(F) the effects of tobacco products, ingredients of tobacco products, and tobacco smoke on the human body and methods of reducing any negative effects, including the development of non-addictive, reduced risk tobacco products;

''(G) differentials between brands of tobacco products with respect to health effects or addiction;

''(H) risks associated with environmental exposure to tobacco smoke, including a focus on children and infants;

''(I) effects of tobacco use by pregnant women; and

''(J) other matters determined appropriate by the Institute.

''(c) REPORT.—Not later than 10 months after the date on which the Secretary enters into the contract under subsection (a), the Institute of Medicine shall prepare and submit to the Secretary, the Committee on Labor and Human Resources, and the Committee on Appropriations of the Senate, and the Committee on Commerce of the House of Representatives, a report that shall contain the findings and recommendations of the Institute for the purposes described in subsection (b).

''SEC. 1991B. RESEARCH COORDINATION.

''(a) IN GENERAL.—The Secretary shall foster coordination among Federal research agencies, public health agencies, academic bodies, and community groups that conduct or support tobacco-related biomedical, clinical, behavioral, health services, public health and community, and surveillance and epidemiology research activities.

''(b) REPORT.—The Secretary shall prepare and submit a report on a biennial basis to the Committee on Labor and Human Resources, and the Committee on Appropriations of the Senate, and the Committee on Commerce of the House of Representatives on the current and planned tobacco-related research activities of participating Federal agencies.

''SEC. 1991C. RESEARCH ACTIVITIES OF THE CENTERS FOR DISEASE CONTROL AND PREVENTION.

''(a) DUTIES.—The Director of the Centers for Disease Control and Prevention shall, from amounts provided under section 451(c), and after review of the study of the Institute of Medicine, carry out tobacco-related surveillance and epidemiologic studies and develop tobacco control and prevention strategies; and

''(b) YOUTH SURVEILLANCE SYSTEMS.—From amounts provided under section 451(b), the Director of the Centers for Disease Control and Prevention shall provide for the use of youth surveillance systems to monitor the use of all tobacco products by individuals under the age of 18, including brands-used to enable determinations to be made of company-specific youth market share.

''SEC. 1991D. RESEARCH ACTIVITIES OF THE NATIONAL INSTITUTES OF HEALTH.

''(a) FUNDING.—There are authorized to be appropriated, from amounts in the National Tobacco Settlement Trust Fund established by section 401 of the National Tobacco Policy and Youth Smoking Reduction Act.

''(b) EXPENDITURE OF FUNDS.—The Director of the National Institutes of Health shall provide funds to conduct or support epidemiological, behavioral, biomedical, and social science research, including research related to the prevention and treatment of tobacco addiction, and the prevention and treatment of diseases associated with tobacco use.

''(c) GUARANTEED MINIMUM.—Of the funds made available to the National Institutes of Health under this section, such sums as may be necessary, may be used to support epidemiological, behavioral, and social science research related to the prevention and treatment of tobacco addiction.

''(d) NATURE OF RESEARCH.—Funds made available under subsection (d) may be used to conduct or support research with respect to one or more of the following—

''(1) the epidemiology of tobacco use;

''(2) the etiology of tobacco use;

''(3) risk factors for tobacco use by children;

''(4) prevention of tobacco use by children, including school and community-based programs, and alternative activities;

''(5) the relationship between tobacco use, alcohol abuse and illicit drug abuse;

''(6) behavioral and pharmacological smoking cessation methods and technologies, including relapse prevention;

''(7) the toxicity of tobacco products and their ingredients;

''(8) the relative harmfulness of different tobacco products;

''(9) environmental exposure to tobacco smoke;

''(10) the impact of tobacco use by pregnant women on their fetuses;

''(11) the redesign of tobacco products to reduce risks to public health and safety; and

''(12) other appropriate epidemiological, behavioral, and social science research.

''(e) COORDINATION.—In carrying out tobacco-related research under this section, the Director of the National Institutes of Health shall ensure appropriate coordination with the research of other agencies, and shall avoid duplicative efforts through all appropriate means.

''(h) ADMINISTRATION.—The director of the NIH Office of Behavioral and Social Sciences Research may—

''(1) identify tobacco-related research initiatives that should be conducted or supported by the research institutes, and develop such projects in cooperation with such institutes;

''(2) coordinate tobacco-related research that is conducted or supported by the National Institutes of Health;

''(3) annually recommend to Congress the allocation of anti-tobacco research funds among the national research institutes; and

''(4) establish a clearinghouse for information about tobacco-related research conducted by governmental and non-governmental bodies.

''(f) TRIGGER.—No expenditure shall be made under subsection (a) during any fiscal year in which the annual amount appropriated for the National Institutes of Health is less than the amount so appropriated for the prior fiscal year.

''(g) REPORT.—The Director of the NIH shall every 2 years prepare and submit to the Congress a report ——— research activities, including funding levels, for research made available under subsection (c).

(b) MEDICAID COVERAGE OF OUTPATIENT SMOKING CESSATION AGENTS.—Paragraph (2) of section 1927(d) of the Public Health Service Act (42 U.S.C. 1396r-8(d)) is amended—

(1) by striking subparagraph (E) and redesignating subparagraphs (F) through (J) as subparagraphs (E) through (I); and

(2) by striking ''drugs.'' in subparagraph (F), as redesignated, and inserting ''drugs, except agents, approved by the Food and Drug Administration, when used to promote smoking cessation.''.

''SEC. 1991E. RESEARCH ACTIVITIES OF THE AGENCY FOR HEALTH CARE POLICY AND RESEARCH.

''(a) IN GENERAL.—The Administrator of the Agency for Health Care Policy and Research shall carry out outcomes, effectiveness, cost-effectiveness, and other health services research related to effective interventions for the prevention and cessation of tobacco use and appropriate strategies for implementing those services, the outcomes and delivery of care for diseases related to tobacco use, and the development of quality measures for evaluating the provision of those services.

''(b) ANALYSES AND SPECIAL PROGRAMS.—The Secretary, acting through the Administrator of the Agency for Health Care Policy and Research, shall support—

''(1) and conduct periodic analyses and evaluations of the best scientific information in the area of smoking and other tobacco product use cessation; and

''(2) the development and dissemination of special programs in cessation intervention for health plans and national health professional societies.''.

TITLE III—TOBACCO PRODUCT WARNINGS AND SMOKE CONSTITUENT DISCLOSURE

Subtitle A—Product Warnings, Labeling and Packaging

SEC. 301. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) IN GENERAL.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—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 non-smokers''

''WARNING: Quitting smoking now greatly reduces serious risks to your health''

''(2) PLACEMENT; TYPOGRAPHY; ETC..—

''(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 25 percent of the front and rear panels of the package. The word ''WARNING'' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(4).

''(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than

25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a) of this section.

''(2) TYPOGRAPHY, ETC..—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word ''WARNING'' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital ''W'' of the word ''WARNING'' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

''(A) an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(4) MARKETING REQUIREMENTS.—

''(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.''.

(b) REPEAL OF PROHIBITION ON STATE RESTRICTION.—Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended—

(1) by striking ''(a) ADDITIONAL STATEMENTS.—'' IN SUBSECTION (A); AND

(2) by striking subsection (b).

SEC. 302. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 301 of this title, is further amended by adding at the end the following:

''(c) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 303. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

''WARNING: This product can cause mouth cancer''

''WARNING: This product can cause gum disease and tooth loss''

''WARNING: This product is not a safe alternative to cigarettes''

''WARNING: Smokeless tobacco is addictive''

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 25 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall—

''(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

''(B) the word ''WARNING'' shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the

tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

SEC. 304. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 303 of this title, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 305. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 301 of this title, is further amended by adding at the end the following:

''(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).''.

Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents

SEC. 311. REGULATION REQUIREMENT.

(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of this Act, the Secretary, through the Commissioner of the Food and Drug Administration, shall promulgate regulations under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that meet the requirements of subsection (b) of this section.

(b) CONTENTS OF RULES.—The rules promulgated under subsection (a) of this section shall require the testing, reporting, and disclosure of tobacco product smoke constituents and ingredients that the Secretary determines should be disclosed to the public in order to protect the public health. Such constituents shall include tar, nicotine, carbon monoxide, and such other smoke constituents or ingredients as the Secretary may determine to be appropriate. The rule may require that tobacco product manufacturers, packagers, or importers make such disclosures relating to tar and nicotine through labels or advertising, and make such disclosures regarding other smoke constituents or ingredients as the Secretary determines are necessary to protect the public health.

(c) AUTHORITY.—The Food and Drug Administration shall have authority to conduct or to require the testing, reporting, or disclosure of tobacco product smoke constituents.

TITLE IV—NATIONAL TOBACCO TRUST FUND

SEC. 401. ESTABLISHMENT OF TRUST FUND.

(a) CREATION.—There is established in the Treasury of the United States a trust fund to be known as the ''National Tobacco Trust Fund'', consisting of such amounts as may be appropriated or credited to the trust fund.

(b) TRANSFERS TO NATIONAL TOBACCO TRUST FUND.—There shall be credited to the trust fund the net revenues resulting from the following amounts:

(1) Amounts paid under section 402.

(2) Amounts equal to the fines or penalties paid under section 402, 403, or 405, including interest thereon.

(3) Amounts equal to penalties paid under section 202, including interest thereon.

(c) NET REVENUES.—For purposes of subsection (b), the term ''net revenues'' means the amount estimated by the Secretary of the Treasury based on the excess of—

(1) the amounts received in the Treasury under subsection (b), over

(2) the decrease in the taxes imposed by chapter 1 and chapter 52 of the Internal Revenue Code of 1986, and other offsets, resulting from the amounts received under subsection (b).

(d) EXPENDITURES FROM THE TRUST FUND.—Amounts in the Trust Fund shall be available in each fiscal year, as provided in appropriation Acts. The authority to allocate net revenues as provided in this title and to obligate any amounts so allocated is contingent upon actual receipt of net revenues.

(e) BUDGETARY TREATMENT.—The amount of net receipts in excess of that amount which is required to offset the direct spending in this Act under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) shall be available exclusively to offset the appropriations required to fund the authorizations of appropriations in this Act (including the amendments made by this Act), and the amount of such appropriations shall not be included in the estimates required under section 251 of that Act (2 U.S.C. 901).

(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 98 of such Code, except that, for purposes of section 9602(b)(3), any interest or proceeds shall be covered into the Treasury as miscellaneous receipts.

SEC. 402. PAYMENTS BY INDUSTRY.

(a) INITIAL PAYMENT.—

(1) CERTAIN TOBACCO PRODUCT MANUFACTURERS.—The following participating tobacco product manufacturers, subject to the provisions of title XIV, shall deposit into the National Tobacco Trust Fund an aggregate payment of $10,000,000,000, apportioned as follows:

(A) Phillip Morris Incorporated—65.8 percent.

(B) Brown and Williamson Tobacco Corporation—17.3 percent.

(C) Lorillard Tobacco Company—7.1 percent.

(D) R.J. Reynolds Tobacco Company—6.6 percent.

(E) United States Tobacco Company—3.2 percent.

(2) NO CONTRIBUTION FROM OTHER TOBACCO PRODUCT MANUFACTURERS.—No other tobacco product manufacturer shall be required to contribute to the payment required by this subsection.

(3) PAYMENT DATE; INTEREST.—Each tobacco product manufacturer required to make a payment under paragraph (1) of this subsection shall make such payment within 30 days after the date of compliance with this Act and shall owe interest on such payment at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the date of enactment of this Act, for payments made after the required payment date.

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in section 403:

(1) year 1—$14,400,000,000.
(2) year 2—$15,400,000,000.
(3) year 3—$17,700,000,000.
(4) year 4—$21,400,000,000.
(5) year 5—$23,600,000,000.
(6) year 6 and thereafter—the adjusted applicable base amount under section 403.

(c) PAYMENT SCHEDULE; RECONCILIATION.—

(1) ESTIMATED PAYMENTS.—Deposits toward the annual payment liability for each calendar year under subsection (d)(2) shall be made in 3 equal installments due on March 1st, on June 1st, and on August 1st of each year. Each installment shall be equal to one-third of the estimated annual payment liability for that calendar year. Deposits of installments paid after the due date shall accrue interest at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date.

(2) RECONCILIATION.—If the liability for a calendar year under subsection (d)(2) exceeds the deposits made during that calendar year, the manufacturer shall pay the unpaid liability on March 1st of the succeeding calendar year, along with the first deposit for that succeeding year. If the deposits during a calendar year exceed the liability for the calendar year under subsection (d)(2), the manufacturer shall subtract the amount of the excess deposits from its deposit on March 1st of the succeeding calendar year.

(d) APPORTIONMENT OF ANNUAL PAYMENT.—

(1) IN GENERAL.—Each tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). The annual payment is the obligation and responsibility of only those tobacco product manufacturers and their affiliates that directly sell tobacco

products in the domestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

(2) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the calendar year. One month after the end of the calendar year, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

(3) CALCULATION OF TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a tobacco product manufacturer shall be equal to that manufacturer's share of adjusted units, taking into account the manufacturer's total production of such units sold in the domestic market. A tobacco product manufacturer's share of adjusted units shall be determined as follows:

(A) UNITS.—A tobacco product manufacturer's number of units shall be determined by counting each—

(i) pack of 20 cigarettes as 1 adjusted unit;

(ii) 1.2 ounces of moist snuff as 0.75 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.35 adjusted units.

(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a smokeless tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units:	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

(C) ADJUSTED UNITS DETERMINED ON TOTAL DOMESTIC PRODUCTION.—For purposes of determining a manufacturer's number of adjusted units under subparagraph (B), a manufacturer's total production of units, whether intended for domestic consumption or export, shall be taken into account.

(D) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a tobacco product manufacturer has more than 200 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

(E) SMOKELESS EQUIVALENCY STUDY.—Not later than January 1, 2003, the Secretary shall submit to the Congress a report detailing the extent to which youths are substituting smokeless tobacco products for cigarettes. If the Secretary determines that significant substitution is occurring, the Secretary shall include in the report recommendations to address substitution, including consideration of modification of the provisions of subparagraph (A).

(e) COMPUTATIONS.—The determinations required by subsection (d) shall be made and certified by the Secretary of Treasury. The parties shall promptly provide the Treasury Department with information sufficient for it to make such determinations.

(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

(1) EXEMPTION .—A manufacturer described in paragraph (3) is exempt from the payments required by subsection (b).

(2) LIMITATION.—Paragraph (1) applies only to assessments on cigarettes to the extent that those cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed to consumers in any calendar year.

(3) TOBACCO PRODUCT MANUFACTURERS TO WHICH SUBSECTION APPLIES.—A tobacco product manufacturer is described in this paragraph if it—

(A) resolved tobacco-related civil actions with more than 25 States before January 1, 1998, through written settlement agreements signed by the attorneys general (or the equivalent chief legal officer if there is no office of attorney general) of those States; and

(B) provides to all other States, not later than December 31, 1998, the opportunity to enter into written settlement agreements that—

(i) are substantially similar to the agreements entered into with those 25 States; and

(ii) provide the other States with annual payment terms that are equivalent to the most favorable annual payment terms of its written settlement agreements with those 25 States.

SEC. 403. ADJUSTMENTS.

The applicable base amount under section 402(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

(1) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—Beginning with the sixth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 402(b)(6) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the annual increase in the CPI, adjusted (for calendar year 2002 and later years) by the volume adjustment under paragraph (2).

(B) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(C) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(2) VOLUME ADJUSTMENT.—Beginning with calendar year 2002, the applicable base amount (as adjusted for inflation under paragraph (1)) shall be adjusted for changes in volume of domestic sales by multiplying the applicable base amount by the ratio of the actual volume for the calendar year to the base volume. For purposes of this paragraph, the term ''base volume'' means 80 percent of the number of units of taxable domestic removals and taxed imports of cigarettes in calendar year 1997, as reported to the Secretary of the Treasury. For purposes of this subsection, the term ''actual volume'' means the number of adjusted unites as defined in section 402(d)(3)(A).

SEC. 404. PAYMENTS TO BE PASSED THROUGH TO CONSUMERS.

Each tobacco product manufacturer shall use its best efforts to adjust the price at which it sells each unit of tobacco products in the domestic market or to an importer for resale in the domestic market by an amount sufficient to pass through to each purchaser on a per-unit basis an equal share of the annual payments to be made by such tobacco product manufacturer under this Act for the year in which the sale occurs.

SEC. 405. TAX TREATMENT OF PAYMENTS.

All payments made under section 402 are ordinary and necessary business expenses for purposes of chapter 1 of the Internal Revenue Code of 1986 for the year in which such payments are made, and no part thereof is either in settlement of an actual or potential liability for a fine or penalty (civil or criminal) or the cost of a tangible or intangible asset or other future benefit.

SEC. 406. ENFORCEMENT FOR NONPAYMENT.

(a) PENALTY.—Any tobacco product manufacturer that fails to make any payment required under section 402 or 404 within 60 days after the date on which such fee is due is liable for a civil penalty computed on the unpaid balance at a rate of prime plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date, during the period the payment remains unmade.

(b) NONCOMPLIANCE PERIOD.—For purposes of this section, the term ''noncompliance period'' means, with respect to any failure to make a payment required under section 402 or 404, the period—

(1) beginning on the due date for such payment; and

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

(c) LIMITATIONS.—

(1) IN GENERAL.—No penalty shall be imposed by subsection (a) on any failure to make a payment under section 402 during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

(2) CORRECTIONS.—No penalty shall be imposed under subsection (a) on any failure to make a payment under section 402 if—

(A) such failure was due to reasonable cause and not to willful neglect; and

(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

(3) WAIVER.—In the case of any failure to make a payment under section 402 that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed under subsection (a) to the extent that the Secretary determines that the payment of such penalty would be excessive relative to the failure involved.

Subtitle B—General Spending Provisions

SEC. 451. ALLOCATION ACCOUNTS.

(a) STATE LITIGATION SETTLEMENT ACCOUNT.—

(1) IN GENERAL.—There is established within the Trust Fund a separate account, to be known as the State Litigation Settlement Account. Of the net revenues credited to the Trust Fund under section 401(b)(1) for each fiscal year, 40 percent of the amounts designated for allocation under the settlement payments shall be allocated to this account. Such amounts shall be reduced by the additional estimated Federal expenditures that will be incurred as a result of State expenditures under section 452, which amounts shall be transferred to the miscellaneous receipts of the Treasury. If, after 10 years, the estimated 25-year total amount projected to received in this account will be different than amount than $196,500,000,000, then beginning with the eleventh year the 40 percent share will be adjusted as necessary, to a percentage not in excees of 50 percent and not less than 30 percent, to achieve that 25-year total amount.

(2) APPROPRIATION.—Amounts so calculated are hereby appropriated and available until expended and shall be available to States for grants authorized under this Act.

(3) DISTRIBUTION FORMULA.—The Secretary of the Treasury shall consult with the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislators on a formula for the distribution of amounts in the State Litigation Settlement Account and report to the Congress within 90 days after the date of enactment of this Act with recommendations for implementing a distribution formula.

(4) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate, consistent with the other provisions of this Act.

(5) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(b) PUBLIC HEALTH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Public Health Account. Twenty-two percent of the net revenues credited to the trust fund under section 401(b)(1) and all the net revenues credited to the trust fund under section 401(b)(3) shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.— Amounts in the Public Health Account shall be available to the extent and only in the amounts provided in advance in appropriations Acts, to remain available until expended, only for the purposes of:

(A) CESSATION AND OTHER TREATMENTS.—Of the total amounts allocated to this account, not less than 25 percent, but not more than 35 percent are to be used to carry out smoking cessation activities under part D of title XIX of the Public Health Service Act, as added by title II of this Act.

(B) INDIAN HEALTH SERVICE.—Of the total amounts allocated to this account, not less than 3 percent, but not more than 7 percent are to be used to carry out activities under section 453.

(C) EDUCATION AND PREVENTION.—Of the total amounts allocated to this account, not less than 50 percent, but not more than 65 percent are to be used to carry out—

(i) counter-advertising activities under section 1982 of the Public Health Service Act as amended by this Act;

(ii) smoking prevention activities under section 223;

(iii) surveys under section 1991C of the Public Health Service Act, as added by this Act (but, in no fiscal year may the amounts used to carry out such surveys be less than 10 percent of the amounts available under this subsection); and

(iv) international activities under section 1132.

(D) ENFORCEMENT.—Of the total amounts allocated to this account, not less than 17.5 percent nor more than 22.5 percent are to be used to carry out the following:

(i) Food and Drug Administration activities.

(I) The Food and Drug Administration shall receive not less than 15 percent of the funds provided in subparagraph (D) in the first fiscal year beginning after the date of enactment of this Act, 35 percent of such funds in the second year beginning after the date of enactment, and 50 percent of such funds for each fiscal year beginning after the date of enactment, as reimbursements for the costs incurred by the Food and Drug Administration in implementing and enforcing requirements relating to tobacco products.

(II) No expenditures shall be made under subparagraph (D) during any fiscal year in which the annual amount appropriated for the Food and Drug Administration is less than the amount so appropriated for the prior fiscal year.

(ii) State retail licensing activities under section 251.

(iii) Anti-Smuggling activities under section 1141.

(c) HEALTH AND HEALTH-RELATED RESEARCH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Health and Health-Related Research Account. Of the net revenues credited to the trust fund under section 401(b)(1), 22 percent shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.— Amounts in the Health and Health-Related Research Account shall be available to the extent and in the amounts provided in advance in appropriations acts, to remain available until expended, only for the following purposes:

(A) $750,000 shall be made vailable in fiscal year 1999 for the study to be conducted under section 1991 of the Public Health Service Act.

(B) National Institutes of Health Research under section 1991D of the Public Health Service Act, as added by this Act. Of the total amounts allocated to this account, not less than 75 percent, but not more than 87 percent shall be used for this purpose.

(C) Centers for Disease Control under section 1991C of the Public Health Service Act, as added by this Act, and Agency for Health Care Policy and Research under section 1991E of the Public Health Service Act, as added by this Act. authorized under sections 2803 of that Act, as so added. Of the total amounts allocated to this account, not less than 12 percent, but not more than 18 percent shall be used for this purpose.

(D) National Science Foundation Research under section 454. Of the total amounts allocated to this account, not less than 1 percent, but not more than 1 percent shall be used for this purpose.

(E) Cancer Clinical Trials under section 455. Of the total amounts allocated to this account, $750,000,000 shall be used for the first 3 fiscal years for this purpose.

(d) FARMERS ASSISTANCE ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Farmers Assistance Account. Of the net revenues credited to the trust fund under section 401(b)(1) in each fiscal year—

(A) 16 percent shall be allocated to this account for the first 10 years after the date of enactment of this Act; and

(B) 4 percent shall be allocated to this account for each subsequent year until the account has received a total of $28,500,000,000.

(2) APPROPRIATION.—Amounts allocated to this account are hereby appropriated and shall be available until expended for the purposes of section 1012.

(e) MEDICARE PRESERVATION ACCOUNT.— There is established within the trust fund a separate account, to be known as the Medicare Preservation Account. If, in any year, the net amounts credited to the trust fund for payments under section 402(b) are greater than the net revenues originally estimated under section 401(b), the amount of any such excess shall be credited to the Medicare Preservation Account. Beginning in the eleventh year beginning after the date of enactment of this Act, 12 percent of the net revenues credited to the trust fund under seciton 401(b)(1) shall be allocated to this account. Funds credited to this account shall be transferred to the Medicare Hospital Insurance Trust Fund.

SEC. 452. GRANTS TO STATES.

(a) AMOUNTS.—From the amount made available under section 402(a) for each fiscal year, each State shall receive a grant on a quarterly basis according to a formula.

(b) USE OF FUNDS.—

(1) UNRESTRICTED FUNDS.—A State may use funds, not to exceed 50 percent of the amount received under this section in a fiscal year, for any activities determined appropriate by the State.

(2) RESTRICTED FUNDS.—A State shall use not less than 50 percent of the amount received under this section in a fiscal year to carry out additional activities or provide additional services under—

(A) the State program under the maternal and child health services block grant under title V of the Social Security Act (42 U.S.C. 701 et seq.);

(B) funding for child care under section 418 of the Social Security Act, notwithstanding subsection (b)(2) of that section;

(C) federally funded child welfare and abuse programs under title IV-B of the Social Security Act;

(D) programs administered within the State under the authority of the Substance Abuse and Mental Health Services Administration under title XIX, part B of the Public Health Service Act;

(E) Safe and Drug-Free Schools Program under title IV, part A, of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7111 et seq.);

(F) the Department of Education's Dwight D. Eisenhower Professional Development program under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.); and

(G) The State Children's Health Insurance Program authorized under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.), provided that the amount expended on this program does not exceed 6 percent of the total amount of restricted funds available to the State each fiscal year.

(c) NO SUBSTITUTION OF SPENDING.— Amounts referred to in subsection (b)(2) shall be used to supplement and not supplant other Federal, State, or local funds provided for any of the programs described in subparagraphs (A) through (G) of subsection (b)(2). Restricted funds, except as provided for in subsection (b)(2)(G), shall not be used as State matching funds. Amounts provided to the State under any of the provisions of law referred to in such subparagraph shall not be reduced solely as a result of the availability of funds under this section.

(d) FEDERAL-STATE MATCH RATES.—Current (1998) matching requirements apply to each program listed under subsection (b)(2), except for the program described under subsection (b)(2)(B). For the program described under subsection (b)(2)(B), after an individual State has expended resources sufficient to receive its full Federal amount under section 418(a)(2)(B) of the Social Security Act (subject to the matching requirements in section 418(a)(2)(C) of such Act), the Federal share of expenditures shall be 80 percent.

(e) MAINTENANCE OF EFFORT.—To receive funds under this subsection, States must demonstrate a maintenance of effort. This maintenance of effort is defined as the sum of—

(1) an amount equal to 95 percent of Federal fiscal year 1997 State spending on the programs under subsections (b)(2)(B), (c), and (d); and

(2) an amount equal to the product of the amount described in paragraph (1) and—

(A) for fiscal year 1999, the lower of—

(i) general inflation as measured by the consumer price index for the previous year; or

(ii) the annual growth in the Federal appropriation for the program in the previous fiscal year; and

(B) for subsequent fiscal years, the lower of—

(i) the cumulative general inflation as measured by the consumer price index for the period between 1997 and the previous year; or

(ii) the cumulative growth in the Federal appropriation for the program for the period between fiscal year 1997 and the previous fiscal year.

The 95-percent maintenance-of-effort requirement in paragraph (1), and the adjustments in paragraph (2), apply to each program identified in paragraph (1) on an individual basis.

(f) OPTIONS FOR CHILDREN'S HEALTH OUTREACH.—In addition to the options for the use of grants described in this section, the following are new options to be added to States' choices for conducting children's health outreach:

(1) EXPANSION OF PRESUMPTIVE ELIGIBILITY OPTION FOR CHILDREN.—

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

(i) by striking ''described in subsection (a) or (II) is authorized'' and inserting ''described in subsection (a), (II) is authorized''; and

(ii) by inserting before the semicolon '', eligibility for benefits under part A of title IV, eligibility of a child to receive benefits under the State plan under this title or title XXI, (III) is a staff member of a public school, child care resource and referral center, or agency administering a plan under part D of title IV, or (IV) is so designated by the State''.

(B) TECHNICAL AMENDMENTS.—Section 1920A of that Act (42 U.S.C. 1396r-1a) is amended—

(i) in subsection (b)(3)(A)(ii), by striking ''paragraph (1)(A)'' and inserting ''paragraph (2)(A)''; and

(ii) in subsection (c)(2), in the matter preceding subparagraph (A), by striking ''subsection (b)(1)(A)'' and inserting ''subsection (b)(2)(A)''.

(2) REMOVAL OF REQUIREMENT THAT CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS BE REDUCED BY COSTS RELATED TO PRESUMPTIVE ELIGIBILITY DETERMINATIONS.—

(A) IN GENERAL.—Section 2104(d) of the Social Security Act (42 U.S.C. 1397dd(d)) is amended by striking ''the sum of—'' and all that follows through the paragraph designation ''(2)'' and merging all that remains of subsection (d) into a single sentence.

(B) EFFECTIVE DATE.—The amendment made by subsection (a) shall be deemed to have taken effect on August 5, 1997.

(3) INCREASED FUNDING FOR ADMINISTRATIVE COSTS RELATED TO OUTREACH AND ELIGIBILITY DETERMINATIONS FOR CHILDREN.—Section 1931(h) of the Social Security Act (42 U.S.C. 1396u-1(h)) is amended—

(A) by striking the subsection caption and inserting ''(h) INCREASED FEDERAL MATCHING RATE FOR ADMINISTRATIVE COSTS RELATED TO OUTREACH AND ELIGIBILITY DETERMINATIONS FOR CHILDREN.—'';

(B) in paragraph (2), by striking ''eligibility determinations'' and all that follows and inserting ''determinations of the eligibility of children for benefits under the State plan under this title or title XXI, outreach to children likely to be eligible for such benefits, and such other outreach- and eligibility-related activities as the Secretary may approve.'';

(C) in paragraph (3), by striking ''and ending with fiscal year 2000 shall not exceed $500,000,000'' and inserting ''shall not exceed $525,000,000''; and

(D) by striking paragraph (4).

(g) PERIODIC REASSESSMENT OF SPENDING OPTIONS.—Spending options under subsection (b)(2) will be reassessed jointly by the States and Federal government every 5 years and be reported to the Secretary.

SEC. 453. INDIAN HEALTH SERVICE.

Amounts available under section 451(b)(2)(B) shall be provided to the Indian Health Service to be used for anti-tobacco-related consumption and cessation activities including—

(1) clinic and facility design, construction, repair, renovation, maintenance and improvement;

(2) provider services and equipment;

(3) domestic and community sanitation associated with clinic and facility construction and improvement; and

(4) other programs and service provided through the Indian Health Service or through tribal contracts, compacts, grants, or cooperative agreements with the Indian Health Service and which are deemed appropriate to raising the health status of Indians.

SEC. 454. RESEARCH AT THE NATIONAL SCIENCE FOUNDATION.

Amounts available under section 451(c)(2)(C) shall be made available for necessary expenses in carry out the National Science Foundation Act of 1950 (U.S.C. 1861-1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880-1881).

SEC. 455. MEDICARE CANCER PATIENT DEMONSTRATION PROJECT; EVALUATION AND REPORT TO CONGRESS.

(a) ESTABLISHMENT.—The Secretary shall establish a 3-year demonstration project which provides for payment under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) of routine patient care costs—

(1) which are provided to an individual diagnosed with cancer and enrolled in the Medicare program under such title as part of the individual's participation in an approved clinical trial program; and

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

(b) APPLICATION.—The beneficiary cost sharing provisions under the Medicare program, such as deductibles, coinsurance, and copayment amounts, shall apply to any individual in a demonstration project conducted under this section.

(c) APPROVED CLINICAL TRIAL PROGRAM.—

(1) IN GENERAL.—For purposes of this section, the term ''approved clinical trial program'' means a clinical trial program which is approved by—

(A) the National Institutes of Health;

(B) a National Institutes of Health cooperative group or a National Institutes of Health center; and

(C) the National Cancer Institute,

with respect to programs that oversee and coordinate extramural clinical cancer research, trials sponsored by such Institute and conducted at designated cancer centers, clinical trials, and Institute grants that support clinical investigators.

(2) MODIFICATIONS IN APPROVED TRIALS.—Beginning 1 year after the date of enactment of this Act, the Secretary, in consultation with the Cancer Policy Board of the Institute of Medicine, may modify or add to the requirements of paragraph (1) with respect to an approved clinical trial program.

(d) ROUTINE PATIENT CARE COSTS.—

(1) IN GENERAL.—For purposes of this section, the term ''routine patient care costs'' include the costs associated with the provision of items and services that—

(A) would otherwise be covered under the Medicare program if such items and services were not provided in connection with an approved clinical trial program; and

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

(2) EXCLUSION.—For purposes of this section, the term ''routine patient care costs'' does not include the costs associated with the provision of—

(A) an investigational drug or device, unless the Secretary has authorized the manufacturer of such drug or device to charge for such drug or device; or

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

(e) STUDY.—The Secretary shall study the impact on the Medicare program under title XVIII of the Social Security Act of covering routine patient care costs for individuals with a diagnosis of cancer and other diagnoses, who are entitled to benefits under such title and who are enrolled in an approved clinical trial program.

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

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

SEC. 501. DEFINITIONS.

In this title:

(1) ASSISTANT SECRETARY.—The term ''Assistant Secretary'' means the Assistant Secretary of the Occupational Safety and Health Administration of the Department of Labor.

(2) PUBLIC FACILITY.—

(A) IN GENERAL.—The term ''public facility'' means any building used for purposes that affect interstate or foreign commerce that is regularly entered by 10 or more individuals at least 1 day per week including any building owned by or leased to an agency, independent establishment, department, or the executive, legislative, or judicial branch of the United States Government.

(B) EXCLUSIONS.—The term ''public facility'' does not include a building or portion thereof which is used for residential purposes or as a restaurant (other than a fast food restaurant), bar, private club, hotel guest room or common area, casino, bingo parlor, tobacconist's shop, or prison.

(C) FAST FOOD RESTAURANT DEFINED.—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 Assistant Secretary may promulgate regulations to clarify this subparagraph to ensure that the intended inclusion of establishments catering 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 if the lessee is actively engaged in supervising day-to-day activity in the leased space.

SEC. 502. 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.—The responsible entity 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 responsible entity 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 Assistant Secretary 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 Assistant Secretary;

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

(4) cleaning and maintenance work are conducted in such area only when no smoking is occurring in the area.

SEC. 503. 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 Assistant Secretary.

(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 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 under 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 Assistant Secretary in exercising such discretion and selecting any such projects.

(f) APPLICATION WITH OSHA.—Nothing in this section affects enforcement of the Occupational Safety and Health Act of 1970.

SEC. 504. PREEMPTION.

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

SEC. 505. REGULATIONS.

The Assistant Secretary is authorized to promulgate such regulations, after consulting with the Administrator of the Environmental Protection Agency, as the Assistant Secretary deems necessary to carry out this title.

SEC. 506. EFFECTIVE DATE.

Except as provided in section 507, the provisions of this title shall take effect on the first day of January next following the next regularly scheduled meeting of the State legislature occurring after the date of enactment of this Act at which, under the procedural rules of that legislature, a measure under section 507 may be considered.

SEC. 507. STATE CHOICE.

Any State or local government may opt out of this title by promulgating a State or local law, subject to certification by the Assistant Secretary that the law is as or more protective of the public's health as this title, based on the best available science. Any State or local government may opt to enforce this title itself, subject to certification by the Assistant Secretary that the enforcement mechanism will effectively protect the public health.

TITLE VI—APPLICATION TO INDIAN TRIBES

SEC. 601. SHORT TITLE.

This title may be cited as the ''Reduction in Tobacco Use and Regulation of Tobacco Products in Indian Country Act of 1998''.

SEC. 602. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that Native Americans have used tobacco products for recreational, ceremonial, and traditional purposes for centuries.

(b) PURPOSE.—It is the purpose of this title to—

(1) provide for the implementation of this Act with respect to the regulation of tobacco products, and other tobacco-related activities on Indian lands;

(2) recognize the historic Native American traditional and ceremonial use of tobacco products, and to preserve and protect the cultural, religious, and ceremonial uses of tobacco by members of Indian tribes;

(3) recognize and respect Indian tribal sovereignty and tribal authority to make and enforce laws regarding the regulation of tobacco distributors and tobacco products on Indian lands; and

(4) ensure that the necessary funding is made available to tribal governments for licensing and enforcement of tobacco distributors and tobacco products on Indian lands.

SEC. 603. APPLICATION OF TITLE TO INDIAN LANDS AND TO NATIVE AMERICANS.

(a) IN GENERAL.—The provisions of this Act shall apply to the manufacture, distribution, and sale of tobacco or tobacco products on Indian lands, including such activities of an Indian tribe or member of such tribe.

(b) TRADITIONAL USE EXCEPTION.—

(1) IN GENERAL.—In recognition of the religious, ceremonial, and traditional uses of tobacco and tobacco products by Indian tribes and the members of such tribes, nothing in this Act shall be construed to permit an infringement upon upon the right of such tribes or members of such tribes to acquire, possess, use, or transfer any tobacco or tobacco product for such purposes, or to infringe upon the ability of minors to participate and use tobacco products for such religious, ceremonial, or traditional purposes.

(2) APPLICATION OF PROVISIONS.—Paragraph (1) shall apply only to those quantities of tobacco or tobacco products necessary to fulfill the religious, ceremonial, or traditional purposes of an Indian tribe or the members of such tribe, and shall not be construed to permit the general manufacture, distribution, sale or use of tobacco or tobacco products in a manner that is not in compliance with this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)

(c) LIMITATION.—Nothing in this Act shall be construed to permit an Indian tribe or member of such a tribe to acquire, possess, use, or transfer any tobacco or tobacco product in violation of section 2341 of title 18, United States Code, with respect to the transportation of contraband cigarettes.

(d) APPLICATION ON INDIAN LANDS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Interior, shall promulgate regulations to implement this section as necessary to apply this Act and the Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) with respect to tobacco products manufactured, distributed, or sold on Indian lands.

(2) SCOPE.—This Act and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) shall apply to the manufacture, distribution and sale of tobacco products on Indian lands, including such activities by Indian tribes and members of such tribes.

(3) TRIBAL TOBACCO RETAILER LICENSING PROGRAM.—

(A) IN GENERAL.—The requirements of this Act with respect to the licensing of tobacco retailers shall apply to all retailers that sell tobacco or tobacco products on Indian lands, including Indian tribes, and members thereof.

(B) IMPLEMENTATION.—

(i) IN GENERAL.—An Indian tribe may implement and enforce a tobacco retailer licensing and enforcement program on its Indian lands consistent with the provisions of section 231 if the tribe is eligible under subparagraph (D). For purposes of this clause, section 231 shall be applied to an Indian tribe by substituting ''Indian tribe'' for ''State'' each place it appears, and an Indian tribe shall not be ineligible for grants under that section if the Secretary applies that section to the tribe by modifying it to address tribal population, land base, and jurisdictional factors.

(ii) COOPERATION.—An Indian tribe and State with tobacco retailer licensing programs within adjacent jurisdictions should consult and confer to ensure effective implementation of their respective programs.

(C) ENFORCEMENT.—The Secretary may vest the responsibility for implementation and enforcement of a tobacco retailer licensing program in—

(i) the Indian tribe involved;

(ii) the State within which the lands of the Indian tribe are located pursuant to a voluntary cooperative agreement entered into by the State and the Indian tribe; or

(iii) the Secretary pursuant to subparagraph (F).

(D) ELIGIBILITY.—To be eligible to implement and enforce a tobacco retailer licensing program under section 231, the Secretary, in consultation with the Secretary of Interior, must find that—

(i) the Indian tribe has a governing body that has powers and carries out duties that are similar to the powers and duties of State or local governments;

(ii) the functions to be exercised relate to activities conducted on its Indian lands; and

(iii) the Indian tribe is reasonably expected to be capable of carrying out the functions required by the Secretary.

(E) DETERMINATIONS.—Not later than 90 days after the date on which an Indian tribe submits an application for authority under subparagraph (D), the Secretary shall make a determination concerning the eligibility of such tribe for such authority. Each tribe found eligible under subparagraph (D) shall be eligible to enter into agreements for block grants under section 231, to conduct a licensing and enforcement program pursuant to section 231, and for bonuses under section 232.

(F) IMPLEMENTATION BY THE SECRETARY.—If the Secretary determines that the Indian tribe is not willing or not qualified to administer a retail licensing and enforcement program, the Secretary, in consultation with the Secretary of Interior, shall promulgate regulations for a program for such tribes in the same manner as for States which have not established a tobacco retailer licensing program under section 231(f).

(G) DEFICIENT APPLICATIONS; OPPORTUNITY TO CURE.—

(i) If the Secretary determines under subparagraph (F) that a Indian tribe is not eligible to establish a tobacco retailer licensing program, the Secretary shall—

(I) submit to such tribe, in writing, a statement of the reasons for such determination of ineligibility; and

(II) shall assist such tribe in overcoming any deficiencies that resulted in the determination of ineligibility.

(ii) After an opportunity to review and cure such deficiencies, the tribe may reapply to the Secretary for assistance under this subsection.

(H) SECRETARIAL REVIEW.—The Secretary may periodically review the tribal tobacco retailer licensing program of a tribe approved pursuant to subparagraph (E), including the effectiveness of the program, the tribe's enforcement thereof, and the compatibility of the tribe's program with the program of the State in which the tribe is located. The program shall be subject to all applicable requirements of section 231.

(e) ELIGIBILITY FOR PUBLIC HEATH FUNDS.—

(1) ELIGIBILITY FOR GRANTS.—

(A) For each fiscal year the Secretary may award grants to Indian tribes from the federal Account or other federal funds, except a tribe that is not a participating tobacco product manufacturer (as defined in section 1402(a), for the same purposes as States and local governments are eligible to receive grants from the Federal Account as provided for in this Act. Indian tribes shall have the flexibility to utilize such grants to meet the unique health care needs of their service populations consistent with the goals and purposes of Federal Indian health care law and policy.

(B) In promulgating regulations for the approval and funding of smoking cessation programs under section 221 the Secretary shall ensure that adequate funding is available to address the high rate of smoking among Native Americans.

(2) HEALTH CARE FUNDING.—

(A) INDIAN HEALTH SERVICE.—Each fiscal year the Secretary shall disburse to the Indian Health Service from the National Tobacco Settlement Trust Fund an amount determined by the Secretary in consultation with the Secretary of the Interior equal to the product of—

(i) the ratio of the total Indian health care service population relative to the total population of the United States; and

(ii) the amount allocated to the States each year from the State Litigation Trust Account.

(B) FUNDING.—The trustees of the Trust Fund shall for each fiscal year transfer to the Secretary from the State Litigation Trust Account the amount determined pursuant to paragraph (A).

(C) USE OF HEALTH CARE TRUST FUNDS.—Amounts made available to the Indian Health Service under this paragraph shall be made available to Indian tribes pursuant to the provisions of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b et seq.), shall be used to reduce tobacco consumption, promote smoking cessation, and shall be used to fund health care activities including—

(i) clinic and facility design, construction, repair, renovation, maintenance, and improvement;

(ii) health care provider services and equipment;

(iii) domestic and community sanitation associated with clinic and facility construction and improvement;

(iv) inpatient and outpatient services; and

(v) other programs and services which have as their goal raising the health status of Indians.

(f) PREEMPTION.—

(1) IN GENERAL.—Except as otherwise provided in this section, nothing in this Act shall be construed to prohibit an Indian tribe 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 by this Act.

(2) PUBLIC EXPOSURE TO SMOKE.—Nothing in this title shall be construed to preempt or otherwise affect any Indian tribe rule or practice that provides greater protections from the health hazard of environmental tobacco smoke.

(g) DISCLAIMER.—Nothing in this Act shall be construed to increase or diminish tribal or State jurisdiction on Indian lands with respect to tobacco-related activities.

TITLE VII—TOBACCO CLAIMS

SEC. 701. DEFINITIONS.

In this title:

(1) AFFILIATE.—The term ''affiliate'' means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, ownership means ownership of an equity interest, or the equivalent thereof, of ten percent or more, and person means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(2) CIVIL ACTION.—The term ''civil action'' means any action, lawsuit, or proceeding that is not a criminal action.

(3) COURT.—The term ''court'' means any judicial or agency court, forum, or tribunal within the United States, including without limitation any Federal, State, or tribal court.

(4) FINAL JUDGMENT.—The term ''final judgment'' means a judgment on which all rights of appeal or discretionary review have been exhausted or waived or for which the time to appeal or seek such discretionary review has expired.

(5) FINAL SETTLEMENT.—The term ''final settlement'' means a settlement agreement that is executed and approved as necessary to be fully binding on all relevant parties.

(6) INDIVIDUAL.—The term ''individual'' means a human being and does not include a corporation, partnership, unincorporated association, trust, estate, or any other public or private entity, State or local government, or Indian tribe.

(7) TOBACCO CLAIM.—The term ''tobacco claim'' means a claim directly or indirectly arising out of, based on, or related to the health-related effects of tobacco products, including without limitation a claim arising out of, based on or related to allegations regarding any conduct, statement, or omission respecting the health-related effects of such products.

(8) TOBACCO PRODUCT MANUFACTURER.—The term ''tobacco product manufacturer'' means a person who—

(A) manufactures tobacco products for sale in the United States after the date of enactment of this Act, including tobacco products for sale in the United States through an importer;

(B) is, after the date of enactment of this Act, the first purchaser for resale in the United States of tobacco products manufactured for sale outside of the United States;

(C) engaged in activities described in subparagraph (A) or (B) prior to the date of enactment of this Act, has not engaged in such activities after the date of enactment of this Act, and was not as of June 20, 1997, an affiliate of a tobacco product manufacturer in which the tobacco product manufacturer or its other affiliates owned a 50 percent or greater interest;

(D) is a successor or assign of any of the foregoing;

(E) is an entity to which any of the foregoing directly or indirectly makes, after the date of enactment of this Act, a fraudulent conveyance or a transfer that would otherwise be voidable under part 5 of title 11 of the United States Code, but only to the extent of the interest or obligation transferred; or

(F) is an affiliate of a tobacco product manufacturer.

(9) CASTANO CIVIL ACTIONS.—The term ''Castano Civil Actions'' means the following civil actions: Gloria Wilkinson Lyons et al. v. American Tobacco Co., et al. (USDC Alabama 96-0881-BH; Agnes McGinty, et al. v. American Tobacco Co., et al. (USDC Arkansas LR-C-96-881); Willard R. Brown, et al. v. R.J. Reynolds Co., et al. (San Diego, California-00711400); Gray Davis & James Ellis, et al. R.J. Reynolds Tobacco Co., et al. (San Diego, California-00706458); Chester Lyons, et al. v. Brown & Williamson Tobacco Corp., et al. (Fulton County, Georgia-E-59346); Rosalyn Peterson, et al. v. American Tobacco Co., et al. (USDC Hawaii-97-00233-HG); Jean Clay , et al. v. American Tobacco Co., et al. (USDC Illinois Benton Division-97-4167-JPG); William J. Norton, et al. v. RJR Nabisco Holdings Corp., et al. (Madison County, Indiana 48D01-9605-CP-0271); Alga Emig, et al. v. American Tobacco Co., et al. (USDC Kansas-97-1121-MLB); Gloria Scott, et al. v. American Tobacco Co., et al. (Orleans Parish, Louisiana-97-1178); Vern Masepohl, et al. v. American Tobacco Co., et al. (USDC Minnesota-3-96-CV-888); Matthew Tepper, et al. v. Philip Morris Incorporated, et al (Bergen County, New Jersey-BER-L-4983-97-E); Carol A. Connor, et al. v. American Tobacco Co., et al. (Bernalillo County, New Mexico-CV96-8464); Edwin Paul Hoskins, et al. v. R.J. Reynolds Tobacco Co., et al.; Josephine Stewart-Lomantz v. Brown & Williamson Tobacco, et al.; Rose Frosina, et al. v. Philip Morris Incorporated, et al.; Catherine Zito, et al. v. American Tobacco Co., et al.; Kevin Mroczkowski, et al. v. Lorillard Tobacco Company, et al. (Supreme Court, New York County, New York-110949 thru 110953); Judith E. Chamberlain, et al. v. American Tobacco Co., et al. (USDC Ohio-1:96CV2005); Brian walls, et al. v. American Tobacco Co., et al. (USDC Oklahoma-97-CV-218-H); Steven R. Arch, et al. v. American Tobacco Co., et al. (USDC Pennsylvania-96-5903-CN); Barreras-Ruiz, et al. v. American Tobacco Co., et al. (USDC Puerto Rico-96-2300-JAF); Joanne Anderson, et al. v. American Tobacco Co., et al. (Know County, Tennessee); Carlis Cole, et al. v. The Tobacco institute, Inc., et al. (USDC Beaumont Texas Division-1:97CV0256); Carrol Jackson, et al. v. Philip Morris Incorporated, et al. (Salt Lake County, Utah-CV No. 98-0901634PI).

SEC. 702. APPLICATION; PREEMPTION.

(a) APPLICATION.—The provisions of this title govern any tobacco claim in any civil action brought in an State, Tribal, or Federal court, including any such claim that has not reached final judgment or final settlement as of the date of enactment of this Act.

(b) PREEMPTION.—This title supersedes State law only to the extent that State law applies to a matter covered by this title. Any matter that is not governed by this title, including any standard of liability applicable to a manufacturer, shall be governed by any applicable State, Tribal, or Federal law.

(c) CRIMINAL LIABILITY UNTOUCHED.—Nothing in this title shall be construed to limit the criminal liability of tobacco product manufacturers, retailers, or distributors, or

their officers, directors, employees, successors, or assigns.

SEC. 703. RULES GOVERNING TOBACCO CLAIMS.

(a) GENERAL CAUSATION PRESUMPTION.—In any civil action to which this title applies brought involving a tobacco claim, there shall be an evidentiary presumption that nicotine is addictive and that the diseases identified as being caused by use of tobacco products in the Center for Disease Control and Prevention Reducing the Health Consequences of Smoking: 25 Years of Progress: A Report of the Surgeon General (United States Public Health Service 1989), The Health Consequences of Smoking: Involuntary Smoking, (USPHS 1986); and The Health Consequences of Using Smokeless Tobacco, (USPHS 1986), are caused in whole or in part by the use of tobacco products, (hereinafter referred to as the ''general causation presumption''), and a jury empaneled to hear a tobacco claim shall be so instructed. In all other respects, the burden of proof as to the issue of whether a plaintiff's specific disease or injury was caused by smoking shall be governed by the law of the State or Tribe in which the tobacco claim was brought. This general causation presumption shall in no way affect the ability of the defendant to introduce evidence or argument which the defendant would otherwise be entitled to present under the law of the State or Tribe in which the tobacco claim was brought to rebut the general causation presumption, or with respect to general causation, specific causation, or alternative causation, or to introduce any other evidence or argument which the defendant would otherwise be entitled to make.

(b) ACTIONS AGAINST PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.—In any civil action brought involving a tobacco claim against participating tobacco product manufacturers, as that term is defined in title XIV, the provisions of title XIV apply in conjunction with the provisions of this title.

TITLE VIII—TOBACCO INDUSTRY ACCOUNTABILITY REQUIREMENTS AND EMPLOYEE PROTECTION FROM REPRISALS

SEC. 801. ACCOUNTABILITY REQUIREMENTS AND OVERSIGHT OF THE TOBACCO INDUSTRY.

(a) ACCOUNTABILITY.—The Secretary, following regular consultation with the Commissioner of Food and Drugs, the Surgeon General, the Director of the Center for Disease Control or the Director's delegate, and the Director of the Health and Human Services Office of Minority Health shall annually issue a report as provided for in subsection (c).

(b) TOBACCO COMPANY PLAN.—Within a year after the date of enactment of this Act, each participating tobacco product manufacturer shall adopt and submit to the Secretary a plan to achieve the required percentage reductions in underage use of tobacco products set forth in section 201, and thereafter shall update its plan no less frequently than annually. The annual report of the Secretary may recommend amendment of any plan to incorporate additional measures to reduce underage tobacco use that are consistent with the provisions of this Act.

(c) ANNUAL REPORT.—The Secretary shall submit a report to the Congress by January 31 of each year, which shall be published in the Federal Register. The report shall—

(1) describe in detail each tobacco product manufacturer's compliance with the provisions of this Act and its plan submitted under subsection (b);

(2) report on whether each tobacco product manufacturer's efforts to reduce underage smoking are likely to result in attainment of smoking reduction targets under section 201;

(3) recommend, where necessary, additional measures individual tobacco companies should undertake to meet those targets; and

(4) include, where applicable, the extent to which prior panel recommendations have been adopted by each tobacco product manufacturer.

SEC. 802. TOBACCO PRODUCT MANUFACTURER EMPLOYEE PROTECTION.

(a) PROHIBITED ACTS.—No tobacco product manufacturer may discharge, demote, or otherwise discriminate against any employee with respect to compensation, terms, conditions, benefits, or privileges of employment because the employee (or any person acting under a request of the employee)—

(1) notified the manufacturer, the Commissioner of Food and Drugs, the Attorney General, or any Federal, State, or local public health or law enforcement authority of an alleged violation of this or any other Act;

(2) refused to engage in any practice made unlawful by such Acts, if the employee has identified the alleged illegality to the manufacturer;

(3) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of such Acts;

(4) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under such Acts, or a proceeding for the administration or enforcement of any requirement imposed under such Acts;

(5) testified or is about to testify in any such proceeding; or

(6) assisted or participated, or is about to assist or participate, in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of such Acts.

(b) EMPLOYEE COMPLAINT.—

(1) Any employee of a tobacco product manufacturer who believes that he or she has been discharged, demoted, or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 180 days after such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary alleging such discharge, demotion, or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of its filing.

(2)(A) Upon receipt of a complaint under paragraph (1) of this subsection, the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days after the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any such person acting in his or her behalf) and the person alleged to have committed such violation of the results of the investigation conducted under this paragraph. Within 90 days after the receipt of such complaint, the Secretary shall (unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation) issue an order either providing the relief prescribed in subparagraph (B) of this paragraph or denying the complaint. An order of the Secretary shall be made on the record after notice and the opportunity for a hearing in accordance with sections 554 and 556 of title 5, United States Code. Upon the conclusion of such a hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B) of this paragraph, but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint under paragraph (1) of this subsection, the Secretary determines that a violation of this paragraph has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his or her former position together with compensation (including back pay), terms, conditions, and privileges of his or her employment. The Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this subparagraph, the Secretary, at the request of the complainant, shall assess the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred (as determined by the Secretary), by the complainant for, or in connection with, the bringing of the complaint upon which the order is issued.

(3)(A) The Secretary shall dismiss a complaint filed under paragraph (1) of this subsection, and shall not conduct the investigation required under paragraph (2) of this subsection, unless the complainant has made a *prima facie* showing that any behavior described in subsection (a) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A) of this paragraph, no investigation required under paragraph (2) of this subsection shall be conducted if the manufacturer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior. Relief may not be ordered under paragraph (1) of this subsection if the manufacturer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

(C) The Secretary may determine that a violation of subsection (a) of this section has occurred only if the complainant has demonstrated that any behavior described in subsection (a) of this section was a contributing factor in unfavorable personnel action alleged in the complaint.

(c) JUDICIAL REVIEW.—

(1) Any person adversely affected or aggrieved by an order issued under subsection (a) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within 60 days after the issuance of the Secretary's order. Judicial review shall be available as provided in chapter 7 of title 5, United States Code. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any criminal or civil proceeding.

(d) NONCOMPLIANCE.—Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation occurred to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages.

(e) ACTION TO ENSURE COMPLIANCE.—

(1) Any person on whose behalf an order was issued under subsection (b)(2) of this section may commence a civil action to require compliance with such order against the person to whom such order was issued. The appropriate United States district court shall have jurisdiction to enforce such order, without regard to the amount in controversy or the citizenship of the parties.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) ENFORCEMENT.—Any non-discretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(g) APPLICABILITY TO CERTAIN EMPLOYEES.—Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from the manufacturer (or the agent of the manufacturer) deliberately causes a violation of any requirement of this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq), or any other law or regulation relating to tobacco products.

(h) EFFECT ON OTHER LAWS.—This section shall not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by a tobacco product manufacturer against the employee.

(i) POSTING.—The provisions of this section shall be prominently posted in any place of employment to which this section applies.

TITLE IX—PUBLIC DISCLOSURE OF TOBACCO INDUSTRY DOCUMENTS

SEC. 901. FINDINGS.

The Congress finds that—

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

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

(3) a prompt and full exposition of tobacco documents will—

(A) promote understanding by the public of the tobacco industry's research and practices; and

(B) further the purposes of this Act.

SEC. 902. APPLICABILITY.

This title applies to all tobacco product manufacturers.

SEC. 903. DOCUMENT DISCLOSURE.

(a) DISCLOSURE TO THE FOOD AND DRUG ADMINISTRATION.—

(1) Within 60 days after the date of enactment of this Act, each tobacco product manufacturer shall submit to the Food and Drug Administration the documents identified in subsection (c), including documents for which trade secret protection is claimed, with the exception of any document for which privilege is claimed, and identified in accordance with subsection (b). Each such manufacturer shall provide the Administration with the privilege and trade secret logs identified under subsection (b).

(2) With respect to documents that are claimed to contain trade secret material, unless and until it is finally determined under this title, either through judicial review or because time for judicial review has expired, that such a document does not constitute or contain trade secret material, the Administration shall treat the document as a trade secret in accordance with section 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379) and the regulations promulgated thereunder. Nothing herein shall limit the authority of the Administration to obtain and use, in accordance with any provision of the Federal Food, Drug, and Cosmetic Act and the regulations promulgated thereunder, any document constituting or containing trade secret material. Documents and materials received by the Administration under this provision shall not be obtainable by or releasable to the public through section 552 of title 5, United States Code, or any other provision of law, and the only recourse to obtain these documents shall be through the process established by section 905.

(3) If a document depository is not established under title XIV, the Secretary shall establish by regulation a procedure for making public all documents submitted under paragraph (1) except documents for which trade secret protection has been claimed and for which there has not been a final judicial determination that the document does not contain a trade secret.

(b) SEPARATE SUBMISSION OF DOCUMENTS.—

(1) (1) PRIVILEGED TRADE SECRET DOCUMENTS.—Any document required to be submitted under subsection (c) or (d) that is subject to a claim by a tobacco product manufacturer of attorney-client privilege, attorney work product, or trade secret protection shall be so marked and shall be submitted to the panel under section 904 within 30 days after its appointment. Compliance with this subsection shall not be deemed to be a waiver of any applicable claim of privilege or trade secret protection.

(2) PRIVILEGE AND TRADE SECRET LOGS.—

(A) IN GENERAL.—Within 15 days after submitting documents under paragraph (1), each tobacco product manufacturer shall submit a comprehensive log which identifies on a document-by-document basis all documents produced for which the manufacturer asserts attorney-client privilege, attorney work-product, or trade secrecy. With respect to documents for which the manufacturer previously has asserted one or more of the aforementioned privileges or trade secret protection, the manufacturer shall conduct a good faith *de novo* review of such documents to determine whether such privilege or trade secret protection is appropriate.

(B) ORGANIZATION OF LOG.—The log shall be organized in numerical order based upon the document identifier assigned to each document. For each document, the log shall contain—

(i) a description of the document, including type of document, title of document, name and position or title of each author, addressee, and other recipient who was intended to receive a copy, document date, document purpose, and general subject matter;

(ii) an explanation why the document or a portion of the document is privileged or subject to trade secret protection; and

(iii) a statement whether any previous claim of privilege or trade secret was denied and, if so, in what proceeding.

(C) PUBLIC INSPECTION.—Within 5 days of receipt of such a log, the Depository shall make it available for public inspection and review.

(3) DECLARATION OF COMPLIANCE.—Each tobacco product manufacturer shall submit to the Depository a declaration, in accordance with the requirements of section 1746 of title 28, United States Code, by an individual with responsibility for the *de novo* review of documents, preparation of the privilege log, and knowledge of its contents. The declarant shall attest to the manufacturer's compliance with the requirements of this subsection pertaining to the review of documents and preparation of a privilege log.

(c) DOCUMENT CATEGORIES.—Each tobacco product manufacturer shall submit—

(1) every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control relating, referring, or pertaining to—

(A) any studies, research, or analysis of any possible health or pharmacological effects in humans or animals, including addiction, associated with the use of tobacco products or components of tobacco products;

(B) the engineering, manipulation, or control of nicotine in tobacco products;

(C) the sale or marketing of tobacco products;

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

(E) tobacco use by minors; or

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

(2) all documents produced by any tobacco product manufacturer, the Center of Tobacco Research or Tobacco Institute to the Attorney General of any State during discovery in any action brought on behalf of any State and commenced after January 1, 1994;

(3) all documents produced by any tobacco product manufacturer, Center for Tobacco Research or Tobacco Institute to the Federal Trade Commission in connection with its investigation into the ''Joe Camel'' advertising campaign and any underage marketing of tobacco products to minors;

(4) all documents produced by any tobacco product manufacturers, the Center for Tobacco Research or the Tobacco Institute to litigation adversaries during discovery in any private litigation matters;

(5) all documents produced by any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute in any of the following private litigation matters:

(A) Philip Morris v. American Broadcasting Co., Law No. 7609CL94x00181-00 (Cir. Ct. Va. filed Mar. 26, 1994);

(B) Estate of Butler v. R.J. Reynolds Tobacco Co., Civ. A. No. 94-5-53 (Cir. Ct. Miss., filed May 12, 1994);

(C) Haines v. Liggett Group, No. 84-CV-678 (D.N.J., filed Feb. 22, 1984); and

(D) Cipollone v. Liggett Group, No. 83-CV-284 (D.N.J., filed Aug. 1, 1983);

(6) any document produced as evidence or potential evidence or submitted to the Depository by tobacco product manufacturers in any of the actions described in paragraph (5), including briefs and other pleadings, memoranda, interrogatories, transcripts of depositions, and expert witnesses and consultants materials, including correspondence, reports, and testimony;

(7) any additional documents that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute have agreed or been required by any court to produce to litigation adversaries as part of discovery in any action listed in paragraph (2), (3), (4), or (5) but have not yet completed producing as of the date of enactment of this Act;

(8) all indices of documents relating to tobacco products and health, with any such indices that are maintained in computerized form placed into the depository in both a computerized and hard-copy form;

(9) a privilege log describing each document or portion of a document otherwise subject to production in the actions enumerated in this subsection that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains, based upon a good faith *de novo* re-review conducted after the date of enactment of this Act is exempt from public disclosure under this title; and

(10) a trade secrecy log describing each document or portion of a document that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains is exempt from public disclosure under this title.

(d) FUTURE DOCUMENTS.—With respect to documents created after the date of enactment of this Act, the tobacco product manufacturers and their trade associations shall—

(1) place the documents in the depository; and

(2) provide a copy of the documents to the Food and Drug Administration (with the exception of documents subject to a claim of attorney-client privilege or attorney work product).

(1) Every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control relating, referring, or pertaining to—

(A) any studies, research, or analysis of any possible health or pharmacological effects in humans or animals, including addiction, associated with the use of tobacco products or components of tobacco products;

(B) the engineering, manipulation, or control of nicotine in tobacco products;

(C) the sale or marketing of tobacco products;

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

(E) tobacco use by minors; or

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

(2) Every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control—

(A) produced, or ordered to be produced, by the tobacco product manufacturer in any health-related civil or criminal proceeding, judicial or administrative; and

(B) that the panel established under section 906 determines is appropriate for submission.

(3) All studies conducted or funded, directly or indirectly, by any tobacco product manufacturer, relating to tobacco product use by minors.

(4) All documents discussing or referring to the relationship, if any, between advertising and promotion and the use of tobacco products by minors.

(5) A privilege log describing each document or each portion of a document otherwise subject to public disclosure under this subsection that any tobacco product manufacturer maintains is exempt from public disclosure under this title.

(6) A trade secrecy log describing each document or each portion of a document otherwise subject to public disclosure under this subsection that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains is exempt from public disclosure under this Act.

(e) DOCUMENT IDENTIFICATION AND INDEX.—Documents submitted under this section shall be sequentially numbered and marked to identify the tobacco product manufacturer. Within 15 days after submission of documents, each tobacco product manufacturer shall supply the panel with a comprehensive document index which references the applicable document categories contained in subsection (b).

SEC. 904. DOCUMENT REVIEW.

(a) AJUDICATION OF PRIVILEGE CLAIMS.—An claim of attorney-client privilege, trade secret protection, or other claim of privilege with respect to a document required to be submitted by this title shall be heard by a 3-judge panel of the United States District Court for the District of Columbia under section 2284 of title 28, United States Code. The panel may appoint special masters, employ such personnel, and establish such procedures as it deems necessary to carry out its functions under this title.

(b) PRIVILEGE.—The panel shall apply the attorney-client privilege, the attorney work-product doctrine, and the trade secret doctrine in a manner consistent with Federal law.

SEC. 905. RESOLUTION OF DISPUTED PRIVILEGE AND TRADE SECRET CLAIMS.

(a) IN GENERAL.—The panel shall determine whether to uphold or reject disputed claims of attorney client privilege, attorney work product, or trade secret protection with respect to documents submitted. Any person may petition the panel to resolve a claim that a document submitted may not be disclosed to the public. Such a determination shall be made by a majority of the panel, in writing, and shall be subject to judicial review as specified in this title. All such determinations shall be made solely on consideration of the subject document and written submissions from the person claiming that the document is privileged or protected by trade secrecy and from any person seeking disclosure of the document. The panel shall cause notice of the petition and the panel's decision to be published in the Federal Register.

(b) FINAL DECISION.—The panel may uphold a claim of privilege or protection in its entirety or, in its sole discretion, it may redact that portion of a document that it determines is protected from public disclosure under subsection (a). Any decision of the panel shall be final unless judicial review is sought under section 906. In the event that judicial review is so sought, the panel's decision shall be stayed pending a final judicial decision.

SEC. 906. APPEAL OF PANEL DECISION.

(a) PETITION; RIGHT OF APPEAL.—Any person may obtain judicial review of a final decision of the panel by filing a petition for review with the United States Court of Appeals for the Federal Circuit within 60 days after the publication of such decision in the Federal Register. A copy of the petition shall be transmitted by the Clerk of the Court to the panel. The panel shall file in the court the record of the proceedings on which the panel based its decision (including any documents reviewed by the panel in *camera*) as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the panel's decision, except that until the filing of the record the panel may modify or set aside its decision.

(b) ADDITIONAL EVIDENCE AND ARGUMENTS.—If the any party applies to the court for leave to adduce additional evidence respecting the decision being reviewed and shows to the satisfaction of the court that such additional evidence or arguments are material and that there were reasonable grounds for the failure to adduce such evidence or arguments in the proceedings before the panel, the court may order the panel to provide additional opportunity for the presentation of evidence or arguments in such manner and upon such terms as the court deems proper. The panel may modify its findings or make new findings by reason of the additional evidence or arguments and shall file with the court such modified or new findings, and its recommendation, if any, for the modification or setting aside of the decision being reviewed.

(c) STANDARD OF REVIEW; FINALITY OF JUDGMENTS.—The panel's findings of fact, if supported by substantial evidence on the record taken as a whole, shall be conclusive. The court shall review the panel's legal conclusions *de novo*. The judgment of the court affirming or setting aside the panel's decision shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(d) PUBLIC DISCLOSURE AFTER FINAL DECISION.—Within 30 days after a final decision that a document, as redacted by the panel or in its entirety, is not protected from disclosure by a claim of attorney-client privilege, attorney work product, or trade secret protection, the panel shall direct that the document be made available to the Commissioner of Food and Drugs under section 903(a). No Federal, Tribal, or State court shall have jurisdiction to review a claim of attorney-client privilege, attorney work product, or trade secret protection for a document that has lawfully been made available to the public under this subsection.

(e) EFFECT OF NON-DISCLOSURE DECISION ON JUDICIAL PROCEEDINGS.—The panel's decision that a document is protected by attorney-client privilege, attorney work product, or trade secret protection is binding only for the purpose of protecting the document from disclosure by the Depository. The decision by the panel shall not be construed to prevent a document from being disclosed in a judicial proceeding or interfere with the authority of a court to determine whether a document is admissible or whether its production may be compelled.

SEC. 907. MISCELLANEOUS.

The disclosure process in this title is not intended to affect the Federal Rules of Civil or Criminal Procedure or any Federal law which requires the disclosure of documents or which deals with attorney-client privilege, attorney work product, or trade secret protection.

SEC. 908. PENALTIES.

(a) GOOD FAITH REQUIREMENT.—Each tobacco product manufacturer shall act in good faith in asserting claims of privilege or trade secret protection based on fact and law. If the panel determines that a tobacco product manufacturer has not acted in good faith with full knowledge of the truth of the facts asserted and with a reasonable basis under existing law, the manufacturer shall be assessed costs, which shall include the full administrative costs of handling the claim of privilege, and all attorneys' fees incurred by the panel and any party contesting the privilege. The panel may also impose civil penalties of up to $50,000 per violation if it determines that the manufacturer acted in bad faith in asserting a privilege, or knowingly acted with the intent to delay, frustrate, defraud, or obstruct the panel's determination of privilege, attorney work product, or trade secret protection claims.

(b) FAILURE TO PRODUCE DOCUMENT.—A failure by a tobacco product manufacturer to produce indexes and documents in compliance with the schedule set forth in this title, or with such extension as may be granted by the panel, shall be punished by a civil penalty of up to $50,000 per violation. A separate violation occurs for each document the manufacturer has failed to produce in a timely manner. The maximum penalty under this subsection for a related series of violations is $5,000,000. In determining the amount of any civil penalty, the panel shall consider the number of documents, length of delay, any history of prior violations, the ability to pay, and such other matters as justice requires. Nothing in this title shall replace or supersede any criminal sanction under title 18, United States Code, or any other provision of law.

SEC. 909. DEFINITIONS.

For the purposes of this title—

(1) DOCUMENT.—The term ''document'' includes originals and drafts of any kind of written or graphic matter, regardless of the manner of production or reproduction, of any kind or description, whether sent or received or neither, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received or otherwise) regardless of whether confidential, privileged, or otherwise, including any paper, book, account, photograph, blueprint, drawing, agreement, contract, memorandum, advertising material, letter, telegram, object, report, record, transcript, study, note, notation, working paper, intra-office communication, intra-department communication, chart, minute, index sheet, routing sheet, computer software, computer data, delivery ticket, flow sheet, price list, quotation, bulletin, circular, manual, summary, recording of telephone or other conversation or of interviews, or of conferences, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, regardless of the manner produced or reproduced. Such term also includes any tape, recording, videotape, computerization, or other electronic recording, whether digital or analog or a combination thereof.

(2) TRADE SECRET.—The term ''trade secret'' means any commercially valuable plan, formula, process, or device that is used for making, compounding, processing, or preparing trade commodities and that can be said to be the end-product of either innovation or substantial effort, for which there is a direct relationship between the plan, formula, process, or device and the productive process.

(3) CERTAIN ACTIONS DEEMED TO BE PROCEEDINGS.—Any action undertaken under this title, including the search, indexing, and production of documents, is deemed to be a ''proceeding'' before the executive branch of the United States.

(4) OTHER TERMS.—Any term used in this title that is defined in section 701 has the meaning given to it by that section.

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

SEC. 1001. SHORT TITLE.

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

SEC. 1002. DEFINITIONS.

In this title:

(1) PARTICIPATING TOBACCO PRODUCER.—The term ''participating tobacco producer'' means a quota holder, quota lessee, or quota tenant.

(2) QUOTA HOLDER.—The term ''quota holder'' means an owner of a farm on January 1, 1998, 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.).

(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 1995, 1996, or 1997 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 1995, 1996, or 1997 crop years.

(4) QUOTA TENANT.—The term ''quota tenant'' means a producer that—

(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 1995, 1996, or 1997 crop years; and

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

(5) SECRETARY.—The term ''Secretary'' means—

(A) in subtitles A and B, the Secretary of Agriculture; and

(B) in section 1031, 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) TOBACCO WAREHOUSE OWNER.—The term ''tobacco warehouse owner'' means a warehouseman that participated in an auction market (as defined in the first section of the Tobacco Inspection Act (7 U.S.C. 511)) during the 1998 marketing year.

(9) FLUE-CURED TOBACCO.—The term ''flue-cured tobacco'' includes type 21 and type 37 tobacco.

Subtitle A—Tobacco Community Revitalization

SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.

There are appropriated and transferred to the Secretary for each fiscal year such amounts from the National Tobacco Trust Fund established by section 401, other than from amounts in the State Litigation Settlement Account, as may be necessary to carry out the provisions of this title.

SEC. 1012. EXPENDITURES.

The Secretary is authorized, subject to appropriations, to make payments under—

(1) section 1021 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed $1,650,000,000 for any fiscal year except to the extent the payments are made in accordance with subsection (d)(12) or (e)(9) of section 1021;

(2) section 1022 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;

(3) section 1023 for tobacco community economic development grants, but not to exceed—

(A) $375,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 1022 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 1022 during the fiscal year;

(4) section 1031 for assistance provided under the tobacco worker transition program, but not to exceed $25,000,000 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.

SEC. 1013. BUDGETARY TREATMENT.

This subtitle 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.

Subtitle B—Tobacco Market Transition Assistance

SEC. 1021. 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.

(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 1997 marketing year—

(A) the producer was a quota holder and realized income (or would have realized income, as determined by the Secretary, but for a medical hardship or crop disaster during the 1997 marketing year) 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 1995 through 1997 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 1995 through 1997 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 the farm for the 1995 through 1997 marketing years—

(i) that was leased and transferred to a farm owned by the quota lessee; or

(ii) that was rented to the quota lessee for the right to produce the tobacco; less

(B) 25 percent of the average number of pounds of tobacco quota described in subparagraph (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 1995 through 1997 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 1995 through 1997 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.—

(A) IN GENERAL.—For each type 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) by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average yield per acre for the farm for the type of tobacco for the marketing years.

(B) YIELDS NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the base quota for the quota holder, quota lessee, or quota tenant (based on a poundage conversion) by determining the amount equal to the product obtained by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average county yield per acre for the county in which the farm is located for the type of tobacco for the marketing years.

(d) PAYMENTS FOR LOST TOBACCO QUOTA FOR TYPES OF TOBACCO OTHER THAN FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for all types of tobacco other than flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) OPTION TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Each quota holder, for types of tobacco other than flue-cured tobacco, shall be given the option to relinquish the farm marketing quota or farm acreage allotment of the quota holder in exchange for a payment made under paragraph (3).

(B) NOTIFICATION.—A quota holder shall give notification of the intention of the quota holder to exercise the option at such time and in such manner as the Secretary may require, but not later than January 15, 1999.

(3) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS EXERCISING OPTIONS TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Subject to subparagraph (E), for each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost tobacco quota to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under subparagraph (E).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) LIFETIME LIMITATION ON PAYMENTS.—The total amount of payments made under this paragraph to a quota holder shall not exceed the product obtained by multiplying the base quota level for the quota holder by $8 per pound.

(4) REISSUANCE OF QUOTA.—

(A) REALLOCATION TO LESSEE OR TENANT.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), a quota lessee or quota tenant that was the primary producer during the 1997 marketing year of tobacco pursuant to the farm marketing quota or farm acreage allotment, as determined by the Secretary, shall be given the option of having an allotment of the farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant.

(B) CONDITIONS FOR REALLOCATION.—

(i) TIMING.—A quota lessee or quota tenant that is given the option of having an allotment of a farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant under subparagraph (A) shall have 1 year from the date on which a farm marketing quota or farm acreage allotment is relinquished under paragraph (2) to exercise the option.

(ii) LIMITATION ON ACREAGE ALLOTMENT.—In the case of a farm acreage allotment, the acreage allotment determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(iii) LIMITATION ON MARKETING QUOTA.—In the case of a farm marketing quota, the marketing quota determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed an amount determined by multiplying—

(I) the average county farm yield, as determined by the Secretary; and

(II) 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(C) ELIGIBILITY OF LESSEE OR TENANT FOR PAYMENTS.—If a farm marketing quota or farm acreage allotment is reallocated to a quota lessee or quota tenant under subparagraph (A)—

(i) the quota lessee or quota tenant shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reallocation; and

(ii) the base quota level for the quota lessee or quota tenant shall not be increased as a result of the reallocation.

(D) REALLOCATION TO QUOTA HOLDERS WITHIN SAME COUNTY OR STATE.—

(i) IN GENERAL.—Except as provided in clause (ii), if there was no quota lessee or quota tenant for the farm marketing quota or farm acreage allotment for a type of tobacco, or if no quota lessee or quota tenant exercises an option of having an allotment of the farm marketing quota or farm acreage allotment for a type of tobacco reallocated, the Secretary shall reapportion the farm marketing quota or farm acreage allotment among the remaining quota holders for the type of tobacco within the same county.

(ii) CROSS-COUNTY LEASING.—In a State in which cross-county leasing is authorized pursuant to section 319(l) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(*l*)), the Secretary shall reapportion the farm marketing quota among the remaining quota holders for the type of tobacco within the same State.

(iii) ELIGIBILITY OF QUOTA HOLDER FOR PAYMENTS.—If a farm marketing quota is reapportioned to a quota holder under this subparagraph—

(I) the quota holder shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reapportionment; and

(II) the base quota level for the quota holder shall not be increased as a result of the reapportionment.

(E) SPECIAL RULE FOR TENANT OF LEASED TOBACCO.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), the farm marketing quota or farm acreage allotment shall be divided evenly between, and the option of reallocating the farm marketing quota or farm acreage allotment shall be offered in equal portions to, the quota lessee and to the quota tenant, if—

(i) during the 1997 marketing year, the farm marketing quota or farm acreage allotment was leased and transferred to a farm owned by the quota lessee; and

(ii) the quota tenant was the primary producer, as determined by the Secretary, of tobacco pursuant to the farm marketing quota or farm acreage allotment.

(5) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) $4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average yield per acre for the farm for the type of tobacco.

(ii) YIELD NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the poundage conversion for each quota holder during a marketing year by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average county yield per acre for the county in which the farm is located for the type of tobacco.

(6) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee and quota tenant, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b) in an amount that is equal to the product obtained by multiplying—

(A) the percentage by which the national marketing quota for the type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years;

(B) the base quota level for the quota lessee or quota tenant; and

(C) $4 per pound.

(7) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or

quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(8) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with paragraph (12).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraphs (5) and (6) to quota holders, quota lessees, and quota tenants under this subsection to ensure that the total amount of payments for lost tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders that have exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2) by increasing the amount payable to each such holder under paragraph (3).

(9) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning with the 1999 marketing year, on the sale and transfer of a farm marketing quota or farm acreage allotment under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314e(g))—

(A) the person that sold and transferred the quota or allotment shall have—

(i) the base quota level attributable to the person reduced by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person reduced by the product obtained by multiplying—

(I) the base quota level attributable to the quota; and

(II) $8 per pound; and

(B) if the quota or allotment has never been relinquished by a previous quota holder under paragraph (2), the person that acquired the quota shall have—

(i) the base quota level attributable to the person increased by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person—

(I) increased by the product obtained by multiplying—

(aa) the base quota level attributable to the quota; and

(bb) $8 per pound; but

(II) decreased by any payments under paragraph (5) for lost tobacco quota previously made that are attributable to the quota that is sold and transferred.

(10) 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 paragraph (5), and the lifetime limitation on payments established under paragraph (7) shall transfer to the new owner of the farm to the same extent and in the same manner as those provisions applied to the previous quota holder.

(11) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—If a quota lessee or quota tenant that is entitled to payments under this subsection 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.

(12) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost tobacco quota as established under paragraphs (5) and (6) to each quota holder, quota lessee, and quota tenant for any affected type of tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for a type of tobacco is less than 50 percent of the national marketing quota or national acreage allotment for the type of tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(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).

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (7); less

(ii) 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 subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for any type of tobacco that results in the national marketing quota or national acreage allotment not being in effect for the type of tobacco shall not be considered a triggering event under this paragraph.

(13) BAN ON SUBSEQUENT SALE OR LEASING OF FARM MARKETING QUOTA OR FARM ACREAGE ALLOTMENT TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—No quota holder that exercises the option to relinquish a farm marketing quota or farm acreage allotment for any type of tobacco under paragraph (2) shall be eligible to acquire a farm marketing quota or farm acreage allotment for the type of tobacco, or to obtain the lease or transfer of a farm marketing quota or farm acreage allotment for the type of tobacco, for a period of 25 crop years after the date on which the quota or allotment was relinquished.

(e) PAYMENTS FOR LOST TOBACCO QUOTA FOR FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) RELINQUISHMENT OF QUOTA.—

(A) IN GENERAL.—Each quota holder of flue-cured tobacco shall relinquish the farm marketing quota or farm acreage allotment in exchange for a payment made under paragraph (3) due to the transition from farm marketing quotas as provided under section 317 of the Agricultural Adjustment Act of 1938 for flue-cured tobacco to individual tobacco production permits as provided under section 317A of the Agricultural Adjustment Act of 1938 for flue-cured tobacco.

(B) NOTIFICATION.—The Secretary shall notify the quota holders of the relinquishment of their quota or allotment at such time and in such manner as the Secretary may require, but not later than November 15, 1998.

(3) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA HOLDERS THAT RELINQUISH QUOTA.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(4) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE NOT RELINQUISHED PERMITS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for flue-cured tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee or quota tenant that—

(i) is eligible under subsection (b);

(ii) has been issued an individual tobacco production permit under section 317A(b) of the Agricultural Adjustment Act of 1938; and

(iii) has not exercised an option to relinquish the permit.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to the product obtained by multiplying—

(i) the number of pounds by which the individual marketing limitation established for the permit is less than twice the base quota level for the quota lessee or quota tenant; and

(ii) $2 per pound.

(5) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE RELINQUISHED PERMITS.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco quota to each quota lessee and quota tenant that has relinquished an individual tobacco production permit under section 317A(b)(5) of the Agricultural Adjustment Act of 1938.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the individual tobacco production permit is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) PROHIBITION AGAINST PERMIT EXPANSION.—A quota lessee or quota tenant that receives a payment under this paragraph shall be ineligible to receive any new or increased tobacco production permit from the county production pool established under section 317A(b)(8) of the Agricultural Adjustment Act of 1938.

(6) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(7) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost flue-cured tobacco quota are made in accordance with paragraph (9).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraph (4) to quota lessees and quota tenants under this subsection to ensure that the total amount of payments for lost flue-cured tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost flue-cured tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTAS OR PERMITS, OR TO QUOTA LESSEES OR QUOTA TENANTS RELINQUISHING PERMITS.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders by increasing the amount payable to each such holder under paragraphs (3) and (5).

(8) DEATH OF QUOTA HOLDER, QUOTA LESSEE, OR QUOTA TENANT.—If a quota holder, quota lessee or quota tenant that is entitled to payments under paragraph (4) or (5) dies and is survived by a spouse or 1 or more descendants, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving descendants in equal shares.

(9) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost flue-cured tobacco quota as established under paragraphs (3), (4), and (5) to each quota holder, quota lessee, and quota tenant for flue-cured tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for flue-cured tobacco is less than 50 percent of the national marketing quota or national acreage allotment for flue-cured tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(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);

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2); or

(VI) section 317A of the Agricultural Adjustment Act of 1938.

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (6); less

(ii) any payments for lost flue-cured tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for flue-cured tobacco that results in the national marketing quota or national acreage allotment not being in effect for flue-cured tobacco shall not be considered a triggering event under this paragraph.

SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.

(a) IN GENERAL.—The Secretary shall use such amounts remaining unspent and obligated 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 participating 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. 1023. 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 farm income of the State derived from the production of tobacco during the 1995 through 1997 marketing years (as determined under paragraph (2)) bears to the total farm income of all States derived from the production of tobacco during the 1995 through 1997 marketing years.

(2) TOBACCO INCOME.—For the 1995 through 1997 marketing years, the Secretary shall determine the amount of farm 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 reallotted 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 participating 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;

(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); and

(H) initiatives designed to partially compensate tobacco warehouse owners for lost revenues and assist the tobacco warehouse owners in establishing successful business enterprises.

(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 1995 through 1997 marketing years. For purposes of this section, the term ''tobacco-growing county'' includes a political subdivision surrounded within a State by a county 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 1995 through 1997 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 WAREHOUSE OWNER INITIATIVES.—Not less than 6 percent of the amounts received by a State under this section during each of fiscal years 1999 through 2008 shall be used to carry out initiatives described in paragraph (1)(H).

(D) 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); and

(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 1998 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 1031; or

(2) an individual who—

(A) during the 1998 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.

(g) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Subject to paragraph (2), a State shall provide an assurance to the Secretary that the amount of funds expended by the State and all counties in the State described in subsection (e)(2) for any activities funded under this section for a fiscal year is not less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year.

(2) REDUCTION OF GRANT AMOUNT.—If a State does not provide an assurance described in paragraph (1), the Secretary shall reduce the amount of the grant determined under subsection (c) by an amount equal to the amount by which the amount of funds expended by the State and counties for the activities is less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year, as determined by the Secretary.

(3) FEDERAL FUNDS.—For purposes of this subsection, the amount of funds expended by a State or county shall not include any amounts made available by the Federal Government.

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

''SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

''(a) DEFINITIONS.—In this section:

''(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketings; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

''(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

''(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketings; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

''(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

''(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

''(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

''(A) the national marketing quota; by

''(B) the national average yield goal.

''(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

''(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

''(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

''(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

''(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

''(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

''(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

''(B) adjusted by a weighted national yield factor calculated by—

''(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

''(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

''(b) INITIAL ISSUANCE OF PERMITS.—

''(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

''(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

''(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

''(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

''(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

''(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

''(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(C) ADMINISTRATION.—The Secretary shall issue regulations—

''(i) defining the term 'person' for the purpose of this paragraph; and

''(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

''(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

''(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

''(ii) the ratio that—

''(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

''(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

''(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

''(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

''(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

''(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

''(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(6) ACTIVE PRODUCER REQUIREMENT.—

''(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

''(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

''(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

''(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

''(iii) the person may not receive any of the return before the sale of the crop.

''(C) PERSONS NOT SHARING RISK.—

''(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

''(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

''(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

''(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

''(8) COUNTY PRODUCTION POOL.—

''(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority.

''(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

''(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

''(ii) a new tobacco producer.

''(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

''(i) the experience of the producer;

''(ii) the availability of land, labor, and equipment for the production of tobacco;

''(iii) crop rotation practices; and

''(iv) the soil and other physical factors affecting the production of tobacco.

''(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(c) REFERENDUM.—

''(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

''(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

''(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

''(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of

flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

''(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

''(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 marketing years; and

''(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

''(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

''(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

''(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

''(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

''(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

''(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

''(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located.

''(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

''(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

''(2) TRANSFER TO DESCENDANTS.—

''(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

''(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

''(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

''(h) RESERVE.—

''(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

''(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

''(B) adjusting inequities; and

''(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

''(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

''(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

''(A) land, labor, and equipment available for the production of tobacco;

''(B) crop rotation practices;

''(C) soil and other physical factors affecting the production of tobacco; and

''(D) the past tobacco-producing experience of the producer.

''(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

''(i) PENALTIES.—

''(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(j) MARKETING PENALTIES.—

''(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

''(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.''.

SEC. 1025. 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 type 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 type 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 type 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 type 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)—

(A) by striking ''(c) The amount'' and inserting ''(c) AMOUNT OF PENALTY.—For the 1998 and subsequent marketing years, the amount''; and

(B) by striking paragraph (1) and inserting the following:

''(1) 105 percent of the average market price for the type of tobacco involved during the preceding marketing year; and''.

(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT.—

(1) IN GENERAL.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) 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)''.

(d) ADJUSTMENT FOR LAND RENTAL COSTS.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following:

''(h) ADJUSTMENT FOR LAND RENTAL COSTS.—For each of the 1999 and 2000 marketing years for flue-cured tobacco, after consultation with producers, State farm organizations and cooperative associations, the Secretary shall make an adjustment in the price support level for flue-cured tobacco equal to the annual change in the average cost per pound to flue-cured producers, as determined by the Secretary, under agreements through which producers rent land to produce flue-cured tobacco.''.

(e) FIRE-CURED AND DARK AIR-CURED TOBACCO PROGRAMS.—

(1) LIMITATION ON TRANSFERS.—Section 318(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d(g)) is amended—

(A) by striking ''ten'' and inserting ''30''; and

(B) by inserting ''during any crop year'' after ''transferred to any farm''.

(2) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Section 318 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d) is amended by adding at the end the following:

''(k) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Effective for the 1999 and subsequent marketing years, no acreage allotment or acreage-poundage quota, other than a new marketing quota, shall be established for a farm on which no fire-cured or dark air-cured tobacco was planted or considered planted during at least 2 of the 3 crop years immediately preceding the crop year for which the acreage allotment or acreage-poundage quota would otherwise be established.''.

(f) EXPANSION OF TYPES OF TOBACCO SUBJECT TO NO NET COST ASSESSMENT.—

(1) NO NET COST TOBACCO FUND.—Section 106A(d)(1)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445–1(d)(1)(A)) is amended—

(A) in clause (ii), by inserting after ''Burley quota tobacco'' the following: ''and fire-cured and dark air-cured quota tobacco''; and

(B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking ''Flue-cured or Burley tobacco'' and inserting ''each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,''; and

(ii) by striking subclause (II) and inserting the following:

''(II) the sum of the amount of the per pound producer contribution and purchaser assessment (if any) for the kind of tobacco payable under clauses (i) and (ii); and''.

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445–2(d)(1)) is amended—

(A) in subparagraph (B), by inserting after ''Burley quota tobacco'' the following: ''and fire-cured and dark air-cured tobacco''; and

(B) in subparagraph (C), by striking ''Flue-cured and Burley tobacco'' and inserting ''each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,''.

Subtitle C—Farmer and Worker Transition Assistance

SEC. 1031. 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 the 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 the firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the 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 the workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—On 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). On a determination that the petition meets the 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.—On 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 the other programs.

(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 $25,000,000.

(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 that Act, the total amount of payments for training under this section for any fiscal year shall not exceed $12,500,000.

(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 that Act (19 U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances on 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 that 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 that Act (19 U.S.C. 2296(a)) by the later of—

(I) the last day of the 16th week of the 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 the 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 1021.

(f) FUNDING.—Of the amounts appropriated to carry out this title, the Secretary may use not to exceed $25,000,000 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 l, 1998; or

(2) the date of enactment of this Act.

(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. 1032. 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 post-secondary 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 1011(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 the

sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based on 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. The 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 the 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 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 the 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 the 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 the grant will be used solely for expenses related to attendance or continued attendance at the institution; and

''(B) the 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 1998 the student was—

''(A) an individual who—

''(i) is a participating tobacco producer (as defined in section 1002 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 the 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 the student can benefit from the education or training

being offered. The 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 the process. In determining whether to approve or disapprove the process, the Secretary shall take into account the effectiveness of the process in enabling students without secondary school diplomas or the recognized equivalent to benefit from the instruction offered by institutions utilizing the 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 the 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 the institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of the 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 the 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 the term does not include a course that is delivered using video cassette or disc recordings at the 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 the 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 the 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 the error was a result of fraud on the part of the student.''.

Subtitle D—Immunity

SEC. 1041. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND TOBACCO WAREHOUSE OWNERS.

Notwithstanding any other provision of this title, a participating 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 the National Tobacco Policy and Youth Smoking Reduction Act.

TITLE XI—MISCELLANEOUS PROVISIONS

Subtitle A—International Provisions

SEC. 1101. POLICY.

It shall be the policy of the United States government to pursue bilateral and multilateral agreements that include measures designed to—

(1) restrict or eliminate tobacco advertising and promotion aimed at children;

(2) require effective warning labels on packages and advertisements of tobacco products;

(3) require disclosure of tobacco ingredient information to the public;

(4) limit access to tobacco products by young people;

(5) reduce smuggling of tobacco and tobacco products;

(6) ensure public protection from environmental tobacco smoke; and

(7) promote tobacco product policy and program information sharing between or among the parties to those agreements.

SEC. 1102. TOBACCO CONTROL NEGOTIATIONS.

The President, in consultation with the Secretary of State, the Secretary of Health and Human Services, and the United States Trade Representative, shall—

(1) act as the lead negotiator for the United States in the area of international tobacco control;

(2) coordinate among U.S. foreign policy and trade negotiators in the area of effective international tobacco control policy;

(3) work closely with non-governmental groups, including public health groups; and

(4) report annually to the Congress on the progress of negotiations to achieve effective international tobacco control policy.

SEC. 1103. REPORT TO CONGRESS.

Not later than 150 days after the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall transmit to the Congress a report identifying the international fora wherein international tobacco control efforts may be negotiated.

SEC. 1104. FUNDING.

There are authorized such sums as are necessary to carry out the provisions of this subtitle.

SEC. 1105. PROHIBITION OF FUNDS TO FACILITATE THE EXPORTATION OR PROMOTION OF TOBACCO.

(a) IN GENERAL.—No officer, employee, department, or agency of the United States may promote the sale or export of tobacco or tobacco products, or seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, unless such restrictions are not applied equally to all tobacco and tobacco products. The United States Trade Representative shall consult with the Secretary regarding inquiries, negotiations, and representations with respect to tobacco and tobacco products, including whether proposed restrictions are reasonable protections of public health.

(b) NOTIFICATION.—Whenever such inquiries, negotiations, or representations are made, the United States Trade Representative shall notify the Congress within 10 days afterwards regarding the nature of the inquiry, negotiation, or representation.

SEC. 1106. HEALTH LABELING OF TOBACCO PRODUCTS FOR EXPORT.

(a) IN GENERAL.—

(1) EXPORTS MUST BE LABELED.—It shall be unlawful for any United States person, directly or through approval or facilitation of a transaction by a foreign person, to make use of the United States mail or of any instrument of interstate commerce to authorize or contribute to the export from the United States any tobacco product unless the tobacco product packaging contains a warning label that—

(A) complies with Federal requirements for labeling of similar tobacco products manufactured, imported, or packaged for sale or distribution in the United States; or

(B) complies with the specific health hazard warning labeling requirements of the foreign country to which the product is exported.

(2) U.S. REQUIREMENTS APPLY IF THE DESTINATION COUNTRY DOES NOT REQUIRE SPECIFIC HEALTH HAZARD WARNING LABELS.—Subparagraph (B) of paragraph (1) does not apply to exports to a foreign country that does not have any specific health hazard warning label requirements for the tobacco product being exported.

(b) UNITED STATES PERSON DEFINED.—For purposes of this section, the term ''United States person'' means—

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

(2) a corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States.

(c) REPORT TO CONGRESS ON ENFORCEMENT; FEASIBILITY REGULATIONS.—

(1) THE PRESIDENT.—The President shall—

(A) report to the Congress within 90 days after the date of enactment of this Act—

(i) regarding methods to ensure compliance with subsection (a); and

(ii) listing countries whose health warnings related to tobacco products are substantially similar to those in the United States; and

(B) promulgate regulations within 1 year after the date of enactment of this Act that will ensure compliance with subsection (a).

(2) THE SECRETARY.—The Secretary shall determine through regulation the feasibility and practicability of requiring health warning labeling in the language of the country

of destination weighing the health and other benefits and economic and other costs. To the greatest extent practicable, the Secretary should design a system that requires the language of the country of destination while minimizing the dislocative effects of such a system.

SEC. 1107. INTERNATIONAL TOBACCO CONTROL AWARENESS.

(a) ESTABLISHMENT OF INTERNATIONAL TOBACCO CONTROL AWARENESS.—The Secretary is authorized to establish an international tobacco control awareness effort. The Secretary shall—

(1) promote efforts to share information and provide education internationally about the health, economic, social, and other costs of tobacco use, including scientific and epidemiological data related to tobacco and tobacco use and enhancing countries' capacity to collect, analyze, and disseminating such data;

(2) promote policies and support and coordinate international efforts, including international agreements or arrangements, that seek to enhance the awareness and understanding of the costs associated with tobacco use;

(3) support the development of appropriate governmental control activities in foreign countries, such as assisting countries to design, implement, and evaluate programs and policies used in the United States or other countries; including the training of United States diplomatic and commercial representatives outside the United States;

(4) undertake other activities as appropriate in foreign countries that help achieve a reduction of tobacco use;

(5) permit United States participation in annual meetings of government and non-government representatives concerning international tobacco use and efforts to reduce tobacco use;

(6) promote mass media campaigns, including paid counter-tobacco advertisements to reverse the image appeal of pro-tobacco messages, especially those that glamorize and ''Westernize'' tobacco use to young people; and

(7) create capacity and global commitment to reduce international tobacco use and prevent youth smoking, including the use of models of previous public health efforts to address global health problems.

(b) ACTIVITIES.—

(1) IN GENERAL.—The activities under subsection (a) shall include—

(A) public health and education programs;

(B) technical assistance;

(C) cooperative efforts and support for related activities of multilateral organization and international organizations;

(D) training; and

(E) such other activities that support the objectives of this section as may be appropriate.

(2) GRANTS AND CONTRACTS.—In carrying out this section, the Secretary shall make grants to, enter into and carry out agreements with, and enter into other transactions with any individual, corporation, or other entity, whether within or outside the United States, including governmental and nongovernmental organizations, international organizations, and multilateral organizations.

(3) TRANSFER OF FUNDS TO AGENCIES.—The Secretary may transfer to any agency of the United States any part of any funds appropriated for the purpose of carrying out this section. Funds authorized to be appropriated by this section shall be available for obligation and expenditure in accordance with the provisions of this section or in accordance with the authority governing the activities of the agency to which such funds are transferred.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from the National Tobacco Trust Fund, to carry out the provisions of this section, including the administrative costs incurred by any agency of the United States in carrying out this section, $350,000,000 for each of the fiscal years 1999 through 2004, and such sums as may be necessary for each fiscal year thereafter. A substantial amount of such funds shall be granted to non-governmental organizations. Any amount appropriated pursuant to this authorization shall remain available without fiscal year limitation until expended.

Subtitle B—Anti-smuggling Provisions

SEC. 1131. DEFINITIONS.

(a) INCORPORATION OF CERTAIN DEFINITIONS.—In this subtitle, the terms ''cigar'', ''cigarette'', ''person'', ''pipe tobacco'', ''roll-your-own tobacco'', ''smokeless tobacco'', ''State'', ''tobacco product'', and ''United States '', shall have the meanings given such terms in sections 5702(a), 5702(b), 7701(a)(1), 5702(o), 5702(n)(1), 5702(p), 3306(j)(1), 5702(c), and 3306(j)(2) respectively of the Internal Revenue Code of 1986.

(b) OTHER DEFINITIONS.—In this subtitle:

(1) AFFILIATE.—The term ''affiliate'' means any one of 2 or more persons if 1 of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of other or others of such persons, and any 2 or more of such persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(2) INTERSTATE OR FOREIGN COMMERCE.—The term ''interstate or foreign commerce'' means any commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(4) PACKAGE.—The term ''package'' means the innermost sealed container irrespective of the material from which such container is made, in which a tobacco product is placed by the manufacturer and in which such tobacco product is offered for sale to a member of the general public.

(5) RETAILER.—The term ''retailer'' means any dealer who sells, or offers for sale, any tobacco product at retail. The term ''retailer'' includes any duty free store that sells, offers for sale, or otherwise distributes at retail in any single transaction 30 or less packages, or it equivalent for other tobacco products.

(6) EXPORTER.—The term ''exporter'' means any person engaged in the business of exporting tobacco products from the United States for purposes of sale or distribution; and the term ''licensed exporter'' means any such person licensed under the provisions of this subtitle. Any duty-free store that sells, offers for sale, or otherwise distributes to any person in any single transaction more than 30 packages of cigarettes, or its equivalent for other tobacco products as the Secretary shall by regulation prescribe, shall be deemed an ''exporter'' under this subtitle.

(7) IMPORTER.—The term ''importer'' means any person engaged in the business of importing tobacco products into the United States for purposes of sale or distribution; and the term ''licensed importer'' means any such person licensed under the provisions of this subtitle.

(8) INTENTIONALLY.—The term ''intentionally'' means doing an act, or omitting to do an act, deliberately, and not due to accident, inadvertence, or mistake. An intentional act does not require that a person knew that his act constituted an offense.

(9) MANUFACTURER.— The term ''manufacturer'' means any person engaged in the business of manufacturing a tobacco product for purposes of sale or distribution, except that such term shall not include a person who manufactures less than 30,000 cigarettes, or its equivalent as determined by regulations, in any twelve month period;; and the term ''licensed manufacturer'' means any such person licensed under the provisions of this subtitle, except that such term shall not include a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use.

(10) WHOLESALER.—The term ''wholesaler'' means any person engaged in the business of purchasing tobacco products for resale at wholesale, or any person acting as an agent or broker for any person engaged in the business of purchasing tobacco products for resale at wholesale, and the term ''licensed wholesaler'' means any such person licensed under the provisions of this subtitle.

SEC. 1132. TOBACCO PRODUCT LABELING REQUIREMENTS.

(a) IN GENERAL.—It is unlawful for any person to sell, or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from Customs custody for use, any tobacco product unless such product is packaged and labeled in conformity with this section.

(b) LABELING.—

(1) IDENTIFICATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations that require each manufacturer or importer of tobacco products to legibly print a unique serial number on all packages of tobacco products manufactured or imported for sale or distribution. The serial number shall be designed to enable the Secretary to identify the manufacturer or importer of the product, and the location and date of manufacture or importation. The Secretary shall determine the size and location of the serial number.

(2) MARKING REQUIREMENTS FOR EXPORTS.—Each package of a tobacco product that is exported shall be marked for export from the United States. The Secretary shall promulgate regulations to determine the size and location of the mark and under what circumstances a waiver of this paragraph shall be granted.

(c) PROHIBITION ON ALTERATION.—It is unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark or label required under this subtitle upon a tobacco product in or affecting commerce, except pursuant to regulations of the Secretary authorizing relabeling for purposes of compliance with the requirements of this section or of State law.

SEC. 1133. TOBACCO PRODUCT LICENSES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish a program under which tobacco product licenses are issued to manufacturers, importers, exporters, and wholesalers of tobacco products.

(b)(1) ELIGIBILITY.—A person is entitled to a license unless the Secretary finds—

(A) that such person has been previously convicted of a Federal crime relating to tobacco, including the taxation thereof;

(B) that such person has, within 5 years prior to the date of application, been previously convicted of any felony under Federal or State law; or

(C) that such person is, by virtue of his business experience, financial standing, or trade connections, not likely to maintain such operations in conformity with Federal law.

(2) CONDITIONS.—The issuance of a license under this section shall be conditioned upon

the compliance with the requirements of this subtitle, all Federal laws relating to the taxation of tobacco products, chapter 114 of title 18, United States Code, and any regulations issued pursuant to such statutes.

(c) REVOCATION, SUSPENSION, AND ANNULMENT.—The program established under subsection (a) shall permit the Secretary to revoke, suspend, or annul a license issued under this section if the Secretary determines that the terms or conditions of the license have not been complied with. Prior to any action under this subsection, the Secretary shall provide the licensee with due notice and the opportunity for a hearing.

(d) RECORDS AND AUDITS.—The Secretary shall, under the program established under subsection (a), require all license holders to keep records concerning the chain of custody of the tobacco products that are the subject of the license and make such records available to the Secretary for inspection and audit.

(e) RETAILERS.—This section does not apply to retailers of tobacco products, except that retailers shall maintain records of receipt, and such records shall be available to the Secretary for inspection and audit. An ordinary commercial record or invoice will satisfy this requirement provided such record shows the date of receipt, from whom such products were received and the quantity of tobacco products received.

SEC. 1134. PROHIBITIONS.

(a) IMPORTATION AND SALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of importing tobacco products into the United States; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so imported.

(b) MANUFACTURE AND SALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of manufacturing, packaging or warehousing tobacco products; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so manufactured, packaged, or warehoused.

(c) WHOLESALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of purchasing for resale at wholesale tobacco products, or, as a principal or agent, to sell, offer for sale, negotiate for, or hold out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, the purchase for resale at wholesale of tobacco products; or

(2) for any person so engaged to receive or sell, offer or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so purchased.

(d) EXPORTATION.—

(1) IN GENERAL.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(A) to engage in the business of exporting tobacco products from the United States; or

(B) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products received for export.

(2) REPORT.—Prior to exportation of tobacco products from the United States, the exporter shall submit a report in such manner and form as the Secretary may by regulation prescribe to enable the Secretary to identify the shipment and assure that it reaches its intended destination.

(3) AGREEMENTS WITH FOREIGN GOVERNMENTS.—The Secretary is authorized to enter into agreements with foreign governments to exchange or share information contained in reports received from exporters of tobacco products if the Secretary believes that such an agreement will assist in—

(A) insuring compliance with any law or regulation enforced or administered by an agency of the United States; or

(B) preventing or detecting violation of the laws or regulations of a foreign government with which the Secretary has entered into an agreement.

Such information may be exchanged or shared with a foreign government only if the Secretary obtains assurances from such government that the information will be held in confidence and used only for the purpose of preventing or detecting violations of the laws or regulations of such government or the United States and, provided further that no information may be exchanged or shared with any government that has violated such assurances.

(e) UNLAWFUL ACTS.—

(1) UNLICENSED RECEIPT OR DELIVERY.—It is unlawful for any licensed importer, licensed manufacturer, or licensed wholesaler intentionally to ship, transport, deliver or receive any tobacco products from or to any person other than a person licensed under this chapter or a retailer licensed under the provisions of this Act, except a licensed importer may receive foreign tobacco products from a foreign manufacturer or a foreign distributor that have not previously entered the United States.

(2) RECEIPT OF RE-IMPORTED GOODS.—It is unlawful for any person, except a licensed manufacturer or a licensed exporter to receive any tobacco products that have previously been exported and returned to the United States.

(3) DELIVERY BY EXPORTER.—It is unlawful for any licensed exporter intentionally to ship, transport, sell or deliver for sale any tobacco products to any person other than a licensed manufacturer or foreign purchaser.

(4) SHIPMENT OF EXPORT-ONLY GOODS.—It is unlawful for any person other than a licensed exporter intentionally to ship, transport, receive or possess, for purposes of resale, any tobacco product in packages marked ''FOR EXPORT FROM THE UNITED STATES,'' other than for direct return to the manufacturer or exporter for re-packing or for re-exportation.

(5) FALSE STATEMENTS.—It is unlawful for any licensed manufacturer, licensed exporter, licensed importer, or licensed wholesaler to make intentionally any false entry in, to fail willfully to make appropriate entry in, or to fail willfully to maintain properly any record or report that he is required to keep as required by this chapter or the regulations promulgated thereunder.

(h) EFFECTIVE DATE.—The provisions of this section shall become effective on the date that is 365 days after the date of enactment of this Act.

SEC. 1135. LABELING OF PRODUCTS SOLD BY NATIVE AMERICANS.

The Secretary, in consultation with the Secretary of the Interior, shall promulgate regulations that require that each package of a tobacco product that is sold on an Indian reservation (as defined in section 403(9) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(9)) be labeled as such. Such regulations shall include requirements for the size and location of the label.

SEC. 1136. LIMITATION ON ACTIVITIES INVOLVING TOBACCO PRODUCTS IN FOREIGN TRADE ZONES.

(a) MANUFACTURE OF TOBACCO PRODUCTS IN FOREIGN TRADE ZONES.—No person shall manufacture a tobacco product in any foreign trade zone, as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.).

(b) EXPORTING OR IMPORTING FROM OR INTO A FOREIGN TRADE ZONE.—Any person exporting or importing tobacco products from or into a foreign trade zone, as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.), shall comply with the requirements provided in this subtitle. In any case where the person operating in a foreign trade zone is acting on behalf of a person licensed under this subtitle, qualification as an importer or exporter will not be required, if such person complies with the requirements set forth in section 1134(d)(2) and (3) of this subtitle.

SEC. 1137. JURISDICTION; PENALTIES; COMPROMISE OF LIABILITY.

(a) JURISDICTION.—The District Courts of the United States, and the United States Court for any Territory, of the District where the offense is committed or of which the offender is an inhabitant or has its principal place of business, are vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this subtitle.

(b) PENALTIES.—Any person violating any of the provisions of this subtitle shall, upon conviction, be fined as provided in section 3571 of title 18, United States Code, imprisoned for not more than 5 years, or both.

(c) CIVIL PENALTIES.—The Secretary may, in lieu of referring violations of this subtitle for criminal prosecution, impose a civil penalty of not more than $10,000 for each offense.

(d) COMPROMISE OF LIABILITY.—The Secretary is authorized, with respect to any violation of this subtitle, to compromise the liability arising with respect to a violation of this subtitle—

(1) upon payment of a sum not in excess of $10,000 for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts; and

(2) in the case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation, that the United States may, on its own motion upon 5 days notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

(e) FORFEITURE.—

(1) The Secretary may seize and forfeit any conveyance, tobacco products, or monetary instrument (as defined in section 5312 of title 31, United States Code) involved in a violation of this subtitle, or any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of this chapter. For purposes of this paragraph, the provisions of subsections (a)(2), (b)(2), and (c) through (j) of section 981 of title 18, United States Code, apply to seizures and forfeitures under this paragraph insofar as they are applicable and not inconsistent with the provisions of this subtitle.

(2) The court, in imposing sentence upon a person convicted of an offense under this subtitle, shall order that the person forfeit to the United States any property described in paragraph (1). The seizure and forfeiture of such property shall be governed by subsections (b), (c), and (e) through (p) of section 853 of title 21, United States Code, insofar as they are applicable and not inconsistent with the provisions of this subtitle.

SEC. 1138. AMENDMENTS TO THE CONTRABAND CIGARETTE TRAFFICKING ACT.

(a) DEFINITIONS.—Section 2341 of title 18, United States Code, is amended—

(1) by striking ''60,000'' and inserting ''30,000'' in paragraph (2);

(2) by inserting after ''payment of cigarette taxes,'' in paragraph (2) the following: ''or in the case of a State that does not require any such indication of tax payment, if the person in possession of the cigarettes is unable to provide any evidence that the cigarettes are moving legally in interstate commerce,'';

(3) by striking ''and'' at the end of paragraph (4);

(4) by striking ''Treasury.'' in paragraph (5) and inserting ''Treasury;''; and

(5) by adding at the end thereof the following:

''(6) the term 'tobacco product' means cigars, cigarettes, smokeless tobacco, roll your own and pipe tobacco (as such terms are defined in section 5701 of the Internal Revenue Code of 1986); and

''(7) the term 'contraband tobacco product' means—

''(A) a quantity in excess of 30,000 of any tobacco product that is manufactured, sold, shipped, delivered, transferred, or possessed in violation of Federal laws relating to the distribution of tobacco products; and

''(B) a quantity of tobacco product that is equivalent to an excess of 30,000 cigarettes, as determined by regulation, which bears no evidence of the payment of applicable State tobacco taxes in the State where such tobacco products are found, if such State requires a stamp, impression, or other indication to be placed on packages or other containers of product to evidence payment of tobacco taxes, or in the case of a State that does not require any such indication of tax payment, if the person in possession of the tobacco product is unable to provide any evidence that the tobacco products are moving legally in interstate commerce and which are in the possession of any person other than a person defined in paragraph (2) of this section.''.

(b) UNLAWFUL ACTS.—Section 2342 of title 18, United States Code, is amended—

(1) by inserting ''or contraband tobacco products'' before the period in subsection (a); and

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

''(c) It is unlawful for any person—

''(1) knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records or reports of any person who ships, sells, or distributes any quantity of cigarettes in excess of 30,000 in a single transaction, or tobacco products in such equivalent quantities as shall be determined by regulation; or

''(2) knowingly to fail or knowingly to fail to maintain distribution records or reports, alter or obliterate required markings, or interfere with any inspection as required with respect to such quantity of cigarettes or other tobacco products.

''(d) It shall be unlawful for any person knowingly to transport cigarettes or other tobacco products under a false bill of lading or without any bill of lading.''.

(d) RECORDKEEPING.—Section 2343 of title 18, United States Code, is amended—

(1) by striking ''60,000'' in subsection (a) and inserting ''30,000'';

(2) by inserting after ''transaction'' in subsection (a) the following: ''or, in the case of other tobacco products an equivalent quantity as determined by regulation,'' ;

(3) by striking the last sentence of subsection (a) and inserting the following:

''Except as provided in subsection (c) of this section, nothing contained herein shall authorize the Secretary to require reporting under this section.'';

(4) by striking ''60,000'' in subsection (b) and inserting ''30,000'';

(5) by inserting after ''transaction'' in subsection (b) the following: ''or, in the case of other tobacco products an equivalent quantity as determined by regulation,''; and

(6) by adding at the end thereof the following:

''(c)(1) Any person who ships, sells, or distributes for resale tobacco products in interstate commerce, whereby such tobacco products are shipped into a State taxing the sale or use of such tobacco products or who advertises or offers tobacco products for such sale or transfer and shipment shall—

''(A) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated, a statement setting for the persons name, and trade name (if any), and the address of the persons principal place of business and of any other place of business; and

''(B) not later than the 10th day of each month, file with the tobacco tax administrator of the State into which such shipment is made a memorandum or a copy of the invoice covering each and every shipment of tobacco products made during the previous month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

''(2) The fact that any person ships or delivers for shipment any tobacco products shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under paragraph (1)(A) of this subsection, be presumptive evidence that such tobacco products were sold, shipped, or distributed for resale by such person.

''(3) For purposes of this subsection—

''(A) the term 'use' includes consumption, storage, handling, or disposal of tobacco products; and

''(B) the term 'tobacco tax administrator' means the State official authorized to administer tobacco tax laws of the State.''.

(e) PENALTIES.—Section 2344 of title 18, United States Code, is amended—

(1) by inserting ''or (c)'' in subsection (b) after ''section 2344(b)'';

(2) by inserting ''or contraband tobacco products'' after ''cigarettes'' in subsection (c); and

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

''(d) Any proceeds from the unlawful distribution of tobacco shall be subject to seizure and forfeiture under section 981(a)(1)(C).''.

(f) REPEAL OF FEDERAL LAW RELATING TO COLLECTION OF STATE CIGARETTE TAXES.—The Act of October 19, 1949, (63 Stat. 884; 15 U.S.C. 375-378) is hereby repealed.

SEC. 1139. FUNDING.

(a) LICENSE FEES.—The Secretary may, in the Secretary's sole discretion, set the fees for licenses required by this chapter, in such amounts as are necessary to recover the costs of administering the provisions of this chapter, including preventing trafficking in contraband tobacco products.

(b) DISPOSITION OF FEES.—Fees collected by the Secretary under this chapter shall be deposited in an account with the Treasury of the United States that is specially designated for paying the costs associated with the administration or enforcement of this chapter or any other Federal law relating to the unlawful trafficking of tobacco products. The Secretary is authorized and directed to pay out of any funds available in such account any expenses incurred by the Federal Government in administering and enforcing this chapter or any other Federal law relating to the unlawful trafficking in tobacco products (including expenses incurred for the salaries and expenses of individuals employed to provide such services). None of the funds deposited into such account shall be available for any purpose other than making payments authorized under the preceding sentence.

SEC. 1140. RULES AND REGULATIONS.

The Secretary shall prescribe all needful rules and regulations for the enforcement of this chapter, including all rules and regulations that are necessary to ensure the lawful distribution of tobacco products in interstate or foreign commerce.

Subtitle C—Other Provisions

SEC. 1161. IMPROVING CHILD CARE AND EARLY CHILDHOOD DEVELOPMENT.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund such sums as may be necessary for each fiscal year to be used by the Secretary 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. 9859 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. 9859 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. 9859 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. 9859 et seq.) for the purpose of improving parent education and supportive services, strengthening the quality of child care, improving health services, and improving services for children with disabilities.

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

SEC. 1162. BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.

(a) BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.—Effective 12 months after the date of enactment of this Act, it shall be unlawful to sell tobacco products through the use of a vending machine.

(b) COMPENSATION FOR BANNED VENDING MACHINES.—

(1) IN GENERAL.—The owners and operators of tobacco vending machines shall be reimbursed, subject to the availability of appropriations under subsection (d), for the fair market value of their tobacco vending machines.

(2) TOBACCO VENDING REIMBURMENT CORPORATION.—

(A) CORPORATION.—Reimbursment shall be directed through a private, nonprofit corporation established in the District of Columbia, known as the Tobacco Vending Reimburment Corporation (in this section referred to as the ''Corporation''). Except as otherwise provided in this section, the Corporation is subject to, and has all the powers conferred upon a nonprofit corporation by

the District of Columbia Nonprofit Corporation Act (D.C. Code section 29-501 et seq.).

(B) DUTIES.—The Corporation shall—

(i) disburse compensation funds to vending companies under this section;

(ii) verify operational machines; and

(iii) maintain complete records of machine verification and accountings of disbursements and administration of the compensation fund established under paragraph (4).

(3) MANAGEMENT OF CORPORATION.—

(A) BOARD OF DIRECTORS.—The Corporation shall be managed by a Board of Directors that—

(i) consists of distinguished Americans with experience in finance, public policy, or fund management;

(ii) includes at least 1 member of the United States tobacco vending machine industry;

(iii) shall be paid an annual salary in an amount determined by the President of the Corporation not to exceed $40,000 individually, out of amounts transferred to the Corporation under paragraph (4)(A);

(iv) shall appoint a President to manage the day-to-day activities of the Corporation;

(v) shall develop guidelines by which the President shall direct the Corporation;

(vi) shall retain a national accounting firm to verify the distribution of funds and audit the compensation fund established under paragraph (4);

(vii) shall retain such legal, management, or consulting assistance as is necessary and reasonable; and

(viii) shall periodically report to Congress regarding the activities of the Corporation.

(B) DUTIES OF THE PRESIDENT OF THE CORPORATION.—The President of the Corporation shall—

(i) hire appropriate staff;

(ii) prepare the report of the Board of Directors of the Corporation required under subparagraph (A)(viii); and

(iii) oversee Corporation functions, including verification of machines, administration and disbursement of funds, maintenance of complete records, operation of appeals procedures, and other directed functions.

(4) COMPENSATION FUND.—

(A) RULES FOR DISBURSEMENT OF FUNDS.—

(i) PAYMENTS TO OWNERS AND OPERATORS.—The Corporation shall disburse funds to compensate the owners and operators of tobacco vending machines in accordance with the following:

(I) The fair market value of each tobacco vending machine verified by the Corporation President in accordance with subparagraph (C), and proven to have been in operation before August 10, 1995, shall be disbursed to the owner of the machine seeking compensation.

(II) No compensation shall be made for a spiral glass front vending machine.

(ii) OTHER PAYMENTS.—Funds appropriated to the Corporation under subsection (d) may be used to pay the administrative costs of the Corporation that are necessary and proper or required by law. The total amount paid by the Corporation for administrative and overhead costs, including accounting fees, legal fees, consultant fees, and associated administrative costs shall not exceed 1 percent of the total amount appropriated to the Corporation under subsection (d).

(B) VERIFICATION OF VENDING MACHINES.—Verification of vending machines shall be based on copies of official State vending licenses, company computerized or handwritten sales records, or physical inspection by the Corporation President or by an inspection agent designated by the President. The Corporation President and the Board of Directors of the Corporation shall work vigorously to prevent and prosecute any fraudulent claims submitted for compensation.

(C) RETURN OF ACCOUNT FUNDS NOT DISTRIBUTED TO VENDORS.—The Corporation shall be dissolved on the date that is 4 years after the date of enactment of this Act. Any funds not dispersed or allocated to claims pending as of that date shall be transferred to a public anti-smoking trust, or used for such other purposes as Congress may designate.

(c) SETTLEMENT OF LEGAL CLAIMS PENDING AGAINST THE UNITED STATES.—Acceptance of a compensation payment from the Corporation by a vending machine owner or operator shall settle all pending and future claims of the owner or operator against the United States that are based on, or related to, the ban of the use of tobacco vending machines imposed under this section and any other laws or regulations that limit the use of tobacco vending machines.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Corporation from funds not otherwise obligated in the Treasury or out of the National Tobacco Trust Fund, such sums as may be necessary to carry out this section.

SEC. 1163. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following new section:

"SEC. 713. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

''(a) INPATIENT CARE.—

''(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the surgical treatment of breast cancer (including a mastectomy, lumpectomy, or lymph node dissection for the treatment of breast cancer) is provided for a period of time as is determined by the attending physician, in his or her professional judgment consistent with generally accepted medical standards, in consultation with the patient, and subject to subsection (d), to be medically appropriate.

''(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician in consultation with the patient determine that a shorter period of hospital stay is medically appropriate.

''(b) RECONSTRUCTIVE SURGERY.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall ensure that, in a case in which a mastectomy patient elects breast reconstruction, coverage is provided for—

''(1) all stages of reconstruction of the breast on which the mastectomy has been performed;

''(2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and

''(3) the costs of prostheses and complications of mastectomy including lymphedemas;

in the manner determined by the attending physician and the patient to be appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

''(c) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted—

''(1) in the next mailing made by the plan or issuer to the participant or beneficiary;

''(2) as part of any yearly informational packet sent to the participant or beneficiary; or

''(3) not later than January 1, 1998;

whichever is earlier.

''(d) NO AUTHORIZATION REQUIRED.—

''(1) IN GENERAL.—An attending physician shall not be required to obtain authorization from the plan or issuer for prescribing any length of stay in connection with a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

''(2) PRENOTIFICATION.—Nothing in this section shall be construed as preventing a group health plan from requiring prenotification of an inpatient stay referred to in this section if such requirement is consistent with terms and conditions applicable to other inpatient benefits under the plan, except that the provision of such inpatient stay benefits shall not be contingent upon such notification.

''(e) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

''(1) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

''(2) provide monetary payments or rebates to individuals to encourage such individuals to accept less than the minimum protections available under this section;

''(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

''(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; and

''(5) subject to subsection (f)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

''(f) RULES OF CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed to require a patient who is a participant or beneficiary—

''(A) to undergo a mastectomy or lymph node dissection in a hospital; or

''(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

''(2) LIMITATION.—This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer.

''(3) COST SHARING.—Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital

lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

''(4) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(g) PREEMPTION, RELATION TO STATE LAWS.—

''(1) IN GENERAL.—Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section with respect to health insurance coverage that—

''(A) such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a mastectomy performed for treatment of breast cancer and at least a 24-hour hospital length of stay following a lymph node dissection of breast cancer;

''(B) requires coverage of at least the coverage of reconstructive breast surgery otherwise required under this section; or

''(C) requires coverage for breast cancer treatments (including breast reconstruction) in accordance with scientific evidence-based practices or guidelines recommended by established medical associations.

''(2) APPLICATION OF SECTION.—With respect to a State law—

''(A) described in paragraph (1)(A), the provisions of this section relating to breast reconstruction shall apply in such State; and

''(B) described in paragraph (1)(B), the provisions of this section relating to length of stays for surgical breast treatment shall apply in such State.

''(3) ERISA.—Nothing in this section shall be construed to affect or modify the provisions of section 514 with respect to group health plans.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 note) is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer and coverage for reconstructive surgery following mastectomies.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning on or after the date of enactment of this Act.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

TITLE XII—ASBESTOS-RELATED TOBACCO CLAIMS

SEC. 1201. NATIONAL TOBACCO TRUST FUNDS AVAILABLE UNDER FUTURE LEGISLATION.

If the Congress enacts qualifying legislation after the date of enactment of this Act to provide for the payment of asbestos claims, then amounts in the National Tobacco Trust Fund established by title IV of this Act set aside for public health expenditures shall be available, as provided by appropriation Acts, to make those payments. For purposes of this section, the term ''qualifying legislation'' means a public law that amends this Act and changes the suballocations of funds set aside for public health expenditures under title IV of this Act to provide for the payment of those claims.

TITLE XIII—VETERANS' BENEFITS

SEC. 1301. RECOVERY BY SECRETARY OF VETERANS AFFAIRS.

Title 38, United States Code, is amended by adding after part VI the following:

''PART VII—RECOVERY OF COSTS FOR TOBACCO-RELATED DISABILITY OR DEATH

''CHAPTER 91—TORT LIABILITY FOR DISABILITY, INJURY, DISEASE, OR DEATH DUE TO TOBACCO USE

''Sec.
''9101. Recovery by Secretary of Veterans Affairs
''9102. Regulations
''9103. Limitation or repeal of other provisions for recovery of compensation
''9104. Exemption from annual limitation on damages

''§ 9101. Recovery by Secretary of Veterans Affairs

''(a) CONDITIONS; EXCEPTIONS; PERSONS LIABLE; AMOUNT OF RECOVERY; SUBROGATION.—In any case in which the Secretary is authorized or required by law to provide compensation and medical care services under this title for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veterans active military, naval, or air service under circumstances creating a tort liability upon a tobacco product manufacturer (other than or in addition to the United States) to pay damages therefor, the Secretary shall have a right to recover (independent of the rights of the injured or diseased veteran) from said tobacco product manufacturer the cost of the compensation paid or to be paid and the costs of medical care services provided, and shall, as to this right, be subrogated to any right or claim that the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the cost of the compensation paid or to be paid and the costs of medical services provided.

''(b) ENFORCEMENT PROCEDURE; INTERVENTION; JOINDER OF PARTIES; STATE OR FEDERAL COURT PROCEEDINGS.—The Secretary may, to enforce such right under subsection (a) of this section—

''(1) intervene or join in any action or proceeding brought by the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors, against the tobacco product manufacturer who is liable for the injury or disease; or

''(2) if such action or proceeding is not commenced within 6 months after the first day on which compensation is paid, or the medical care services are provided, by the Secretary in connection with the injury or disease involved, institute and prosecute legal proceedings against the tobacco product manufacturer who is liable for the injury or disease, in a State or Federal court, either alone (in its own name or in the name of the injured veteran, his or her guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors.

''(c) CREDITS TO APPROPRIATIONS.—Any amount recovered or collected under this section for compensation paid, and medical care services provided, by the Secretary shall be credited to a revolving fund established in the Treasury of the United States known as the Department of Veterans Affairs Tobacco Recovery Fund (hereafter called the Fund). The Fund shall be available to the Secretary without fiscal year limitation for purposes of veterans programs, including administrative costs. The Secretary may transfer such funds as deemed necessary to the various Department of Veterans Affairs appropriations, which shall remain available until expended.

''§ 9102. Regulations

''(a) DETERMINATION AND ESTABLISHMENT OF PRESENT VALUE OF COMPENSATION AND MEDICAL CARE SERVICES TO BE PAID.—The Secretary may prescribe regulations to carry out this chapter, including regulations with respect to the determination and establishment of the present value of compensation to be paid to an injured or diseased veteran or his or her surviving spouse, child, or parent, and medical care services provided to a veteran.

''(b) SETTLEMENT, RELEASE AND WAIVER OF CLAIMS.—To the extent prescribed by regulations under subsection (a) of this section, the Secretary may—

''(1) compromise, or settle and execute a release of, any claim which the Secretary has by virtue of the right established by section 9101 of this title; or

''(2) waive any such claim, in whole or in part, for the convenience of the Government, or if he or she determines that collection would result in undue hardship upon the veteran who suffered the injury or disease or his or her surviving spouse, child or parent resulting in payment of compensation, or receipt of medical care services.

''(c) DAMAGES RECOVERABLE FOR PERSONAL INJURY UNAFFECTED.—No action taken by the Secretary in connection with the rights afforded under this chapter shall operate to deny to the injured veteran or his or her surviving spouse, child or parent the recovery for that portion of his or her damage not covered hereunder.

''§ 9103. Limitation or repeal of other provisions for recovery of compensation and medical care services

''This chapter does not limit or repeal any other provision of law providing for recovery by the Secretary of the cost of compensation and medical care services described in section 9101 of this title.

''§ 9104. Exemption from annual limitation on damages

''Any amount recovered under section 9101 of this title for compensation paid or to be paid, and the cost of medical care services provided, by the Secretary for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veterans active military, naval, or air service shall not be subject to the limitation on the annual amount of damages for which the tobacco product manufacturers may be found liable as provided in the National Tobacco Policy and Youth Smoking Reduction Act and shall not be counted in computing the annual amount of damages for purposes of that section.''.

TITLE XIV—EXCHANGE OF BENEFITS FOR AGREEMENT TO TAKE ADDITIONAL MEASURES TO REDUCE YOUTH SMOKING

SEC. 1401. CONFERRAL OF BENEFITS ON PARTICIPATING TOBACCO PRODUCT MANUFACTURERS IN RETURN FOR THEIR ASSUMPTION OF SPECIFIC OBLIGATIONS.

Participating tobacco product manufacturers shall receive the benefits, and assume the obligations, set forth in this title.

SEC. 1402. PARTICIPATING TOBACCO PRODUCT MANUFACTURER.

(a) IN GENERAL.—Except as provided in subsection (b), a tobacco product manufacturer that—

(1) executes a protocol with the Secretary of Health and Human Services that meets the requirements of sections 1403, 1404, and 1405; and

(2) makes the payment required under section 402(a)(1),

is, for purposes of this title, a participating tobacco products manufacturer.

(b) DISQUALIFICATION.—

(1) INELIGIBILITY.—Notwithstanding subsection (a), a tobacco product manufacturer may not become a participating tobacco products manufacturer if—

(A) the tobacco product manufacturer or any of its principal officers (acting in that official's corporate capacity), is convicted of—

(i) manufacturing or distributing misbranded tobacco products in violation of the criminal prohibitions on such misbranding established under section 301 or 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331 or 333);

(ii) violating reporting requirements established under section 5762(a)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 5762(a)(4));

(iii) violating, or aiding and abetting the violation of chapter 114 of title 18, United States Code; or

(iv) violating Federal prohibitions on mail fraud, wire fraud, or the making of false statements to Federal officials in the course of making reports or disclosures required by this Act; or

(B) the tobacco product manufacturer, at the end of the 1-year period beginning on the date on which such manufacturer fails to make a required assessment payment under title IV of this Act, has not fully made such payment.

(2) DISQUALIFICATION.—A tobacco product manufacturer that has become a participating tobacco product manufacturer shall cease to be treated as a participating tobacco product manufacturer if—

(A) it, or any of its principal officers (acting in that official's corporate capacity) is convicted of an offense described in paragraph (1)(A); or

(B) it fails to make such a payment within the time period described in paragraph (1)(B).

(c) NON-PARTICIPATING TOBACCO MANUFACTURERS.—Any tobacco product manufacturer that—

(1) does not execute a protocol in accordance with subsection (a);

(2) fails to make the payment required by section 402(a)(1) (if applicable to that manufacturer);

(3) is not eligible, under subsection (b)(1), to become a participating tobacco product manufacturer; or

(4) ceases to be treated as a participating tobacco product manufacturer under subsection (b)(2),

is, for purposes of this title, a non-participating tobacco product manufacturer.

SEC. 1403. GENERAL PROVISIONS OF PROTOCOL.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it—

(1) contains the provisions described in subsection (b); and

(2) is enforceable at law.

(b) REQUIRED PROVISIONS.—The protocol shall include the following provisions:

(1) The tobacco product manufacturer executing the protocol will not engage in any conduct that was, either on the date of enactment of this Act, or at any time after the date of enactment of this Act—

(A) prohibited by this Act;

(B) prohibited by any regulation promulgated by the Food and Drug Administration that applies to tobacco products; or

(C) prohibited by any other statute.

(2) The tobacco product manufacturer executing the protocol will contract with only such distributors and retailers who have operated in compliance with the applicable provisions of Federal, State, or local law regarding the marketing and sale of tobacco products and who agree to comply with advertising and marketing provisions in paragraph (3).

(3) The tobacco product manufacturer executing the protocol will be bound in marketing tobacco products by the following provisions, whether or not these provisions have legal force and effect against manufacturers who are not signatories to the protocol—

(A) the advertising and marketing provisions of part 897 of title 21, Code of Federal Regulations, that were published in the Federal Register on August 28, 1996, and which shall be adopted and incorporated as independent terms of the protocol;

(B) the requirements of section 1404; and

(C) the requirements of section 1405.

(4) The tobacco product manufacturer executing the protocol will make any payments to the National Tobacco Trust Fund in title IV that are required to be made under that title or in any other title of this Act.

(5) The tobacco product manufacturer executing the protocol will be bound by the provisions of title IV, and any other title of this Act with respect to payments required under title IV, without regard to whether those provisions have legal force and effect against manufacturers who have not become signatories.

(6) The tobacco product manufacturer executing the protocol will make the industry-wide and manufacturer-specific look-back assessment payments that may be required under title II.

(7) The tobacco product manufacturer executing the protocol will be bound by the provisions of title II that require a manufacturer to make look-back assessments, and any other title of this Act with respect to such assessments, without regard to whether such terms have legal force and effect against manufacturers who have not become signatories.

(8) The tobacco product manufacturer executing the protocol will, within 180 days after the date of enactment of this Act and in conjunction with other participating tobacco product manufacturers, establish a National Tobacco Document Depository in the Washington, D.C. area—

(A) that is not affiliated with, or controlled by, any tobacco product manufacturer;

(B) the establishment and operational costs of which are allocated among participating tobacco product manufacturers; and

(C) that will make any document submitted to it under title IX of this Act and finally determined not to be subject to attorney-client privilege, attorney work product, or trade secret exclusions, available to the public using the Internet or other means within 30 days after receiving the document.

(c) PROVISIONS APPLICABLE TO DOCUMENTS.—The provisions of section 2116(a) and (b) of title 44, United States Code, apply to records and documents submitted to the Depository (or, to the alternative depository, if any, established by the Secretary by regulation under title IX of this Act) in the same manner and to the same extent as if they were records submitted to the National Archives of the United States required by statute to be retained indefinitely.

SEC. 1404. TOBACCO PRODUCT LABELING AND ADVERTISING REQUIREMENTS OF PROTOCOL.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it requires that—

(1) no tobacco product will be sold or distributed in the United States unless its advertising and labeling (including the package)—

(A) contain no human image, animal image, or cartoon character;

(B) are not outdoor advertising, including advertising in enclosed stadia and on mass transit vehicles, and advertising from within a retail establishment that is directed toward or visible from the outside of the establishment;

(C) at the time the advertising or labeling is first used are submitted to the Secretary so that the Secretary may conduct regular review of the advertising and labeling;

(D) comply with any applicable requirement of the Federal Food, Drug, and Cosmetic Act, the Federal Cigarette Labeling and Advertising Act, and any regulation promulgated under either of those Acts;

(E) do not appear on the international computer network of both Federal and non-Federal interoperable packet switches data networks (the ''Internet''), unless such advertising is designed to be inaccessible in or from the United States to all individuals under the age of 18 years;

(F) use only black text on white background, other than—

(i) those locations other than retail stores where no person under the age of 18 is permitted or present at any time, if the advertising is not visible from outside the establishment and is affixed to a wall or fixture in the establishment; and

(ii) advertisements appearing in any publication which the tobacco product manufacturer, distributor, or retailer demonstrates to the Secretary is a newspaper, magazine, periodical, or other publication whose readers under the age of 18 years constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence, and that is read by less than 2 million persons under the age of 18 years as measured by competent and reliable survey evidence;

(G) for video formats, use only static black text on a white background, and any accompanying audio uses only words without music or sound effects;

(8) for audio formats, use only words without music or sound effects;

(2) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of brand-name product identification of the tobacco product is contained in a movie, program, or video game for which a direct or indirect payment has been made to ensure its placement;

(3) if a direct or indirect payment has been made by any tobacco product manufacturer, distributor, or retailer to any entity for the purpose of promoting use of the tobacco product through print or film media that appeals to individuals under the age of 18 years or through a live performance by an entertainment artist that appeals to such individuals;

(4) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia or product identification identical to, similar to, or identifiable with

the tobacco product is used for any item (other than a tobacco product) or service marketed, licensed, distributed or sold or caused to be marketed, licensed, distributed, or sold by the tobacco product manufacturer or distributor of the tobacco product; and

(5)(A) except as provided in subparagraph (B), if advertising or labeling for such product that is otherwise in accordance with the requirements of this section bears a tobacco product brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification and is disseminated in a medium other than newspapers, magazines, periodicals or other publications (whether periodic or limited distribution), nonpoint-of-sale promotional material (including direct mail), point-of-sale promotional material, or audio or video formats delivered at a point-of-sale; but

(B) notwithstanding subparagraph (A), advertising or labeling for cigarettes or smokeless tobacco may be disseminated in a medium that is not specified in paragraph (1) if the tobacco product manufacturer, distributor, or retailer notifies the Secretary not later than 30 days prior to the use of such medium, and the notice describes the medium and the extent to which the advertising or labeling may be seen by persons under the age of 18 years.

(b) COLOR PRINT ADS ON MAGAZINES.—The protocol shall also provide that no tobacco product may be sold or distributed in the United States if any advertising for that product on the outside back cover of a magazine appears in any color or combination of colors.

SEC. 1405. POINT-OF-SALE REQUIREMENTS.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it provides that, except as provided in subsection (b), point-of-sale advertising of any tobacco product in any retail establishment is prohibited.

(b) PERMITTED POS LOCATIONS.—

(1) PLACEMENT.—One point-of-sale advertisement may be placed in or at each retail establishment for its brand or the contracted house retailer or private label brand of its wholesaler.

(2) SIZE.—The display area of any such point-of-sale advertisement (either individually or in the aggregate) shall not be larger than 576 square inches and shall consist of black letters on white background or another recognized typography.

(3) PROXIMITY TO CANDY.—Any such point-of-sale advertisement shall not be attached to or located within 2 feet of any display fixture on which candy is displayed for sale.

(c) AUDIO OR VIDEO.—Any audio or video format permitted under regulations promulgated by the Secretary may be played or shown in, but not distributed, at any location where tobacco products are offered for sale.

(d) NO RESTRICTIVE COVENANTS.—No tobacco product manufacturer or distributor of tobacco products may enter into any arrangement with a retailer that limits the retailer's ability to display any form of advertising or promotional material originating with another supplier and permitted by law to be displayed in a retail establishment.

(e) DEFINITIONS.—As used in this section, the terms ''point-of-sale advertisement'' and ''point-of-sale advertising'' mean all printed or graphical materials (other than a pack, box, carton, or container of any kind in which cigarettes or smokeless tobacco is offered for sale, sold, or otherwise distributed to consumers) bearing the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco, which, when used for its intended purpose, can reasonably be anticipated to be seen by customers at a location where tobacco products are offered for sale.

SEC. 1406. APPLICATION OF TITLE.

(a) IN GENERAL.—The provisions of this title apply to any civil action involving a tobacco claim brought pursuant to title VII of this Act, including any such claim that has not reached final judgment or final settlement as of the date of enactment of this Act, only if such claim is brought or maintained against—

(1) a participating tobacco product manufacturer or its predecessors;

(2) an importer, distributor, wholesaler, or retailer of tobacco products—

(A) that, after the date of enactment of this Act, does not import, distribute, or sell tobacco products made or sold by a non-participating tobacco manufacturer;

(B) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the protocol; and

(C) that is not itself a non-participating tobacco product manufacturer;

(3) a supplier of component or constituent parts of tobacco products—

(A) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the protocol; and

(B) that is not itself a non-participating tobacco product manufacturer;

(4) a grower of tobacco products, unless such person is itself a non-participating tobacco product manufacturer; or

(5) an insurer of any person described in paragraph (1), (2), (3), or (4) based on, arising out of, or related to tobacco products manufactured, imported, distributed, or sold (or tobacco grown) by such person (other than an action brought by the insured person), unless such insurer is itself a non-participating tobacco product manufacturer.

(b) EXCEPTIONS.—The provisions of this title shall not apply to any tobacco claim—

(1) brought against any person other than those described in subsection (a) or to any tobacco claim that reached final judgment or final settlement prior to the date of enactment of this Act;

(2) against an employer under valid workers' compensation laws;

(3) arising under the securities laws of a State or the United State;

(4) brought by the United States;

(5) brought under this title by a State or a participating tobacco product manufacturer to enforce this Act;

(6) asserting damage to the environment from exposures other than environmental smoke or second-hand smoke; or

(7) brought against a supplier of a component or constituent part of a tobacco product, if the component or constituent part was sold after the date of enactment of this Act, and the supplier knew that the tobacco product giving rise to the claim would be manufactured in the United States by a non-participating tobacco product manufacturer.

SEC. 1407. GOVERNMENTAL CLAIMS.

(a) IN GENERAL.—Except as provided in subsection (b) and (c), no State, political subdivision of a State, municipal corporation, governmental entity or corporation, Indian tribe, or agency or subdivision thereof, or other entity acting in *parens patriae*, may file or maintain any civil action involving a tobacco claim against a participating tobacco product manufacturer.

(b) EFFECT ON EXISTING STATE SUITS OF SETTLEMENT AGREEMENT OR CONSENT DECREE.—Within 30 days after the date of enactment of this Act, any State that has filed a civil action involving a tobacco claim against a participating tobacco product manufacturer may elect to settle such action against said tobacco product manufacturer. If a State makes such an election to enter into a settlement or a consent decree, it may maintain a civil action involving a tobacco claim only to the extent necessary to permit continuing court jurisdiction over the settlement or consent decree. Nothing herein shall preclude any State from bringing suit or seeking a court order to enforce the terms of such settlement or decree.

(c) STATE OPTION FOR ONE-TIME OPT OUT.—Any State that does not make the election described in subsection (b) may continue its lawsuit, notwithstanding subsection (a) of this section. A State that does not make such an election shall not be eligible to receive payments from the trust fund in title IV.

(d) 30-DAY DELAY.—No settlement or consent decree entered into under subsection (b) may take effect until 30 days after the date of enactment of this Act.

(f) PRESERVATION OF INSURANCE CLAIMS.—

(1) IN GENERAL.—If all participating tobacco product manufacturers fail to make the payments required by title IV for any calendar year, then—

(A) beginning on the first day of the next calendar year, subsection (a) does not apply to any insurance claim (including a direct action claim) that is a tobacco claim, regardless of when that claim arose;

(B) any statute of limitations or doctrine of laches under applicable law shall be tolled for the period—

(i) beginning on the date of enactment of this Act; and

(ii) ending on the last day of that calendar year; and

(C) an insurance claim (including a direct action claim) that is a tobacco claim and that is pending on the date of enactment of this Act shall be preserved.

(2) APPLICATION OF TITLE 11, UNITED STATES CODE.—For purposes of this subsection, nothing in this Act shall be construed to modify, suspend, or otherwise affect the application of title 11, United States Code, to participating tobacco manufacturers that fail to make such payments.

(3) STATE LAW NOT AFFECTED.—Nothing in this subsection shall be construed to expand or abridge State law.

SEC. 1408. ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.

(a) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained against a participating tobacco product manufacturer.

(b) CASTANO CIVIL ACTIONS.—

(1) The rights and benefits afforded in this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute the exclusive remedy for the purpose of determining civil liability as to those claims asserted in the Castano Civil Actions, and all bases for any such claim under the laws of any State are preempted (including State substantive, procedural, remedial, and evidentiary provisions) and settled. The Castano Civil Actions shall be dismissed with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions, as defined in section 1417(2), in accordance with this Act. For purposes of determining application of statutes of limitation or repose, individual actions filed within one year after the effective date of this Act by those who were included within a Castano Civil Action shall be considered to have been filed as of the date of the Castano Civil Action applicable to said individual.

(2) For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(3) The participating tobacco product manufacturers shall pay the arbitration award.

SEC. 1409. SUBSTANTIAL NON-ATTAINMENT OF REQUIRED REDUCTIONS.

(a) ACTION BY SECRETARY.—If the Secretary determines under title II that the non-attainment percentage for any year is greater than 20 percentage points for cigarettes or smokeless tobacco, then the Secretary shall determine, on a brand-by-brand basis, using data that reflects a 1999 baseline, which tobacco product manufacturers are responsible within the 2 categories of tobacco products for the excess. The Secretary may commence an action under this section against the tobacco product manufacturer or manufacturers of the brand or brands of cigarettes or smokeless tobacco products for which the non-attainment percentage exceeded 20 percentage points.

(b) PROCEDURES.—Any action under this section shall be commenced by the Secretary in the United States District Court for the District of Columbia within 90 days after publication in the Federal Register of the determination that the non-attainment percentage for the tobacco product in question is greater than 20 percentage points. Any such action shall be heard and determined by a 3-judge court under section 2284 of title 28, United States Code.

(c) DETERMINATION BY COURT.—In any action under this section, the court shall determine whether a tobacco product manufacturer has shown, by a preponderance of the evidence that it—

(1) has complied substantially with the provisions of this Act regarding underage tobacco use, of any rules or regulations promulgated thereunder, or of any Federal or State laws regarding underage tobacco use;

(2) has not taken any material action to undermine the achievement of the required percentage reduction for the tobacco product in question; and

(3) has used its best efforts to reduce underage tobacco use to a degree at least equal to the required percentage reductions.

(d) REMOVAL OF ANNUAL AGGREGATE PAYMENT LIMITATION.—Except as provided in subsections (e) and (g), if the court determines that a tobacco product manufacturer has failed to make the showing described in subsection (c) then sections 1411 and 1412 of this Act do not apply to the enforcement against, or the payment by, such tobacco product manufacturer of any judgment or settlement that becomes final after that determination is made.

(e) DEFENSE.—An action under this section shall be dismissed, and subsection (d) shall not apply, if the court finds that the Secretary's determination under subsection (a) was unlawful under subparagraph (A), (B), (C), or (D) of section 706(2) of title 5, United States Code. Any judgments paid under section 1412 of this Act prior to a final judgment determining that the Secretary's determination was erroneous shall be fully credited, with interest, under section 1412 of this Act.

(f) REVIEW.—Decisions of the court under this section are reviewable only by the Supreme Court by writ of certiorari granted upon the petition of any party. The applicability of subsection (d) shall be stayed during the pendency of any such petition or review.

(g) CONTINUING EFFECT.—Subsection (d) shall cease to apply to a tobacco product manufacturer found to have engaged in conduct described in subsection (c) upon the later of—

(1) a determination by the Secretary under section 201 after the commencement of action under subsection (a) that the non-attainment percentage for the tobacco product in question is 20 or fewer percentage points; or

(2) a finding by the court in an action filed against the Secretary by the manufacturer, not earlier than 2 years after the determination described in subsection (c) becomes final, that the manufacturer has shown by a preponderance of the evidence that, in the period since that determination, the manufacturer—

(A) has complied with the provisions of this Act regarding underage tobacco use, of any rules or regulations promulgated thereunder, and of any other applicable Federal, State, or local laws, rules, or regulations;

(B) has not taken any action to undermine the achievement of the required percentage reduction for the tobacco product in question; and

(C) has used its best efforts to attain the required percentage reduction for the tobacco product in question.

A judgment or settlement against the tobacco product manufacturer that becomes final after a determination or finding described in paragraph (1) or (2) of this subsection is not subject to subsection (d). An action under paragraph (2) of this subsection shall be commenced in the United States District Court for the District of Columbia, and shall be heard and determined by a 3-judge court under section 2284 of title 28, United States Code. A decision by the court under paragraph (2) of this subsection is reviewable only by the Supreme Court by writ of certiorari granted upon the petition of any party, and the decision shall be stayed during the pendency of the petition or review. A determination or finding described in paragraph (1) or (2) of this subsection does not limit the Secretary's authority to bring a subsequent action under this section against any tobacco product manufacturer or the applicability of subsection (d) with respect to any such subsequent action.

SEC. 1410. PUBLIC HEALTH EMERGENCY.

If the Secretary, in consultation with the Commissioner of Food and Drugs, the Surgeon General, the Director of the Center for Disease Control or the Director's delegate, and the Director of the Health and Human Services Office of Minority Health determines at any time that a tobacco product manufacturer's actions or inactions with respect to its compliance with the Act are of such a nature as to create a clear and present danger that the manufacturer will not attain the targets for underage smoking reduction, the Secretary may bring an action under section 1409 seeking the immediate suspension of the tobacco product manufacturer's annual limitation cap on civil judgments. If the court determines that the Secretary has proved by clear and convincing evidence that the subject manufacturer's actions or inactions are of such a nature that they present a clear and present danger that the manufacturer will not attain the targets for underage smoking reduction, the court may suspend the subject manufacturer's annual limitation cap on civil judgments.

SEC. 1411. TOBACCO CLAIMS BROUGHT AGAINST PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.

(a) PERMISSIBLE DEFENDANTS.—In any civil action to which this title applies, tobacco claims may be filed or maintained only against—

(1) a participating tobacco product manufacturer; or

(2) a surviving entity established by a participating tobacco product manufacturer.

(b) ACTIONS INVOLVING PARTICIPATING AND NON-PARTICIPATING MANUFACTURERS.—In any civil action involving both a tobacco claim against a participating tobacco product manufacturer based in whole or in part upon conduct occurring prior to the date of enactment of this Act and a claim against 1 or more non-participating tobacco product manufacturers, the court, upon application of a participating tobacco product manufacturer, shall require the jury to or shall itself apportion liability as between the participating tobacco product manufacturer and non-participating tobacco product manufacturers.

SEC. 1412. PAYMENT OF TOBACCO CLAIM SETTLEMENTS AND JUDGMENTS.

(a) IN GENERAL.—Except as provided in this section, any judgment or settlement in any civil action to which this subtitle applies shall be subject to the process for payment of judgments and settlements set forth in this section. No participating tobacco product manufacturer shall be obligated to pay a judgment or settlement on a tobacco claim in any civil action to which this title applies except in accordance with this section. This section shall not apply to the portion, if any, of a judgment that imposes punitive damages based on any conduct that—

(1) occurs after the date of enactment of this Act; and

(2) is other than the manufacture, development, advertising, marketing, or sale of tobacco products in compliance with this Act and any agreement incident thereto.

(b) REGISTRATION WITH THE SECRETARY OF THE TREASURY.—

(1) The Secretary shall maintain a record of settlements, judgments, and payments in civil actions to which this title applies.

(2) Any party claiming entitlement to a monetary payment under a final judgment or final settlement on a tobacco claim shall register such claim with the Secretary by filing a true and correct copy of the final judgment or final settlement agreement with the Secretary and providing a copy of such filing to all other parties to the judgment or settlement.

(3) Any participating tobacco product manufacturer making a payment on any final judgment or final settlement to which this section applies shall certify such payment to the Secretary by filing a true and correct copy of the proof of payment and a statement of the remaining unpaid portion, if any, of such final judgment or final settlement with the Secretary and shall provide a copy of such filing to all other parties to the judgment or settlement.

(c) LIABILITY CAP.—

(1) IN GENERAL.—The aggregate payments made by all participating tobacco product manufacturers in any calendar year may not exceed $8,000,000,000.

(2) IMPLEMENTATION.—The Secretary shall initiate a rulemaking within 30 days after the date of enactment of this Act to establish a mechanism for implementing this subsection in such a way to ensure the fair and equitable payment of final judgments or final settlements on tobacco claims under this title. Amounts not payable because of the application of this subsection, shall be carried forward and paid in the next year, subject to the provisions of this subsection.

(3) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—The amount in paragraph (1) shall be increased annually, beginning with the second calendar year beginning after the date of enactment of this Act, by

the greater of 3 percent or the annual increase in the CPI.

(B) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(C) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(d) INJUNCTIVE RELIEF.—A participating tobacco product manufacturer may commence an action to enjoin any State court proceeding to enforce or execute any judgment or settlement where payment has not been authorized under this section. Such an action shall arise under the laws of the United States and may be commenced in the district court of the United States for the district in which the State court proceeding is pending.

(e) JOINT AND SEVERAL LIABILITY.—All participating tobacco product manufacturers shall be jointly and severally liable for, and shall enter into an agreement to apportion among them, any amounts payable under judgments and settlements governed by this section arising in whole or in part from conduct occurring prior to the date of enactment of this Act.

(f) BANKRUPTCY OF PARTICIPATING MANUFACTURER.—No participating tobacco product manufacturer shall cease operations without establishing a surviving entity against which a tobacco claim may be brought. Any obligation , interest, or debt of a participating, tobacco product manufacturer arising under such liability apportionment agreement shall be given priority and shall not be rejected, avoided, discharged, or otherwise modified or diminished in a proceeding, under title 11, United States Code, or in any liquidation, reorganization, receivership, or other insolvency proceeding under State law. A trustee or receiver in any proceeding under title 11, United States Code, or in liquidation, reorganization, receivership, or other insolvency proceeding under State law, may avoid any transfer of an interest of the participating tobacco product manufacturer, or any obligation incurred by such manufacturer, that was made or incurred on or within 2 years before the date of the filing of a bankruptcy petition, if such manufacturer made such transfer or incurred such obligation to hinder or defeat in any fashion the payment of any obligation, interest, or debt of the manufacturer arising under the liability apportionment agreement. Any property vesting in the participating tobacco product manufacturer following such a proceeding shall be subject to all claims and interest of creditors arising under the liability apportionment agreement.

(f) LIMITATION ON STATE COURTS.—No court of any State, Tribe, or political subdivision of a State may take any action to inhibit the effective operation of subsection (c).

SEC. 1413. ATTORNEYS' FEES AND EXPENSES.

(a) ARBITRATION PANEL.—

(1) RIGHT TO ESTABLISH .—For the purpose of awarding of attorneys' fees and expenses relating to litigation affected by, or legal services that, in whole or in part, resulted in or created a model for programs in, this Act, and with respect to which litigation or services the attorney involved is unable to agree with the plaintiff who employed that attorney with respect to any dispute that may arise between them regarding the fee agreement, the matter at issue shall be submitted to arbitration. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the plaintiff, one of whom shall be chosen by the attorney, and one of whom shall be chosen jointly by those 2 arbitrators.

(2) OPERATION.—Not later than 30 days after the date on which all members of an arbitration panel are appointed under paragraph (1), the panel shall establish the procedures under which the panel will operate which shall include—

(A) a requirement that any finding by the arbitration panel must be in writing and supported by written reasons;

(B) procedures for the exchanging of exhibits and witness lists by the various claimants for awards;

(C) to the maximum extent practicable, requirements that proceedings before the panel be based on affidavits rather than live testimony; and

(D) a requirement that all claims be submitted to an arbitration panel not later than 3 months after the date of this Act and a determination made by the panel with respect to such claims not later than 7 months after such date of enactment.

(3) RIGHT TO PETITION.—Any individual attorney or group of attorneys involved in litigation affected by this Act shall have the right to petition an arbitration panel for attorneys' fees and expenses.

(4) CRITERIA.—In making any award under this section, an arbitration panel shall consider the following criteria:

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

(B) The novelty and difficulty of the questions involved in the action for which the claimant is making a claim.

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

(D) The preclusion of other employment by the attorney due to acceptance of the action involved.

(E) Whether the fee is fixed or a percentage.

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

(G) The amount involved and the results obtained.

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

(I) The undesirability of the action.

(J) Such other factors as justice may require.

(5) APPEAL AND ENFORCEMENT.—The findings of an arbitration panel shall be final, binding, nonappealable, and payable within 30 days after the date on which the finding is made public, except that if an award is to be paid in installments, the first installment shall be payable within such 30 day period and succeeding installments shall be paid annually thereafter.

(b) VALIDITY AND ENFORCEABILITY OF PRIVATE AGREEMENTS.—Notwithstanding any other provision of this Act, nothing in this section shall be construed to abrogate or restrict in any way the rights of any parties to mediate, negotiate, or settle any fee or expense disputes or issues to which this section applies, or to enter into private agreements with respect to the allocation or division of fees among the attorneys party to any such agreement.

(c) OFFSET FOR AMOUNTS ALREADY PAID.—In making a determination under this section with regard to a dispute between a State that pursued independent civil action against tobacco product manufacturers and its attorney, the arbitration panel shall take into account any amounts already paid by the State under the agreement in dispute.

SEC. 1414. EFFECT OF COURT DECISIONS.

(a) SEVERABILITY.—If any provision of titles I through XIII, or the application thereof to any person, manufacturer or circumstance, is held invalid, the remainder of the provisions of those titles, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) NONSEVERABILITY.—If a court of competent jurisdiction enters a final decision substantially limiting or impairing the essential elements of title XIV, specifically the requirements of sections 1404 and 1405, then the provisions of section 1412 are null and void and of no effect.

SEC. 1415. CRIMINAL LAWS NOT AFFECTED.

Nothing in this title shall be construed to limit the criminal liability of tobacco product manufacturers, retailers, or distributors or their directors, officers, employees, successors, or assigns.

SEC. 1416. CONGRESS RESERVES THE RIGHT TO ENACT LAWS IN THE FUTURE.

The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress in accordance with the provisions of Article I of the Constitution of the United States and more than 200 years of history.

SEC. 1417. DEFINITIONS.

In this title:

(1) TERMS DEFINED IN TITLE VII.—Any term used in this title that is defined in title VII has the meaning given to it in title VII.

(2) ADDITIONAL DEFINITIONS.—

(A) ADDICTION CLAIM; DEPENDENCE CLAIM.—The term ''addiction claim'' or ''dependence claim'' refers only to any cause of action to the extent that the prayer for relief seeks a cessation program, or other public health program that is to be available to members of the general public and is designed to reduce or eliminate the users' addiction to, or dependence on, tobacco products, and as used herein is brought by those who claim the need for nicotine reduction assistance. Neither addiction or dependence claims include claims related to or involving manifestation of illness or tobacco-related diseases.

(B) COMPENSATORY DAMAGES.—The term ''compensatory damages'' refers to those damages necessary to reimburse an injured party, and includes actual, general, and special damages.

(C) PROTOCOL.—The term ''protocol'' means the agreement to be entered into by the Secretary of Health and Human Services with a participating tobacco product manufacturers under this title.

(D) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages in addition to compensatory damages having the character of punishment or penalty.

(E) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury, except where the context otherwise requires.

TITLE XV—TOBACCO TRANSITION

SEC. 1501. SHORT TITLE.

This title may be cited as the ''Tobacco Transition Act''.

SEC. 1502. PURPOSES.

The purposes of this title are—

(1) to authorize the use of binding contracts between the United States and tobacco quota owners and tobacco producers to compensate them for the termination of Federal programs that support the production of tobacco in the United States;

(2) to make available to States funds for economic assistance initiatives in counties of States that are dependent on the production of tobacco; and

(3) to terminate Federal programs that support the production of tobacco in the United States.

SEC. 1503. DEFINITIONS.

In this title:

(1) ASSOCIATION.—The term ''association'' means a producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers.

(2) BUYOUT PAYMENT.—The term ''buyout payment'' means a payment made to a quota

owner under section 1514 for each of the 1999 through 2001 marketing years.

(3) CONTRACT.—The term ''contract'' or ''tobacco transition contract'' means a contract entered into under section 1512.

(4) GOVERNOR.—The term ''Governor'' means the chief executive officer of a State.

(5) LEASE.—The term ''lease'' means—

(A) the rental of quota on either a cash rent or crop share basis;

(B) the rental of farmland to produce tobacco under a farm marketing quota; or

(C) the lease and transfer of quota for the marketing of tobacco produced on the farm of a lessor.

(6) MARKETING YEAR.—The term ''marketing year'' means—

(A) in the case of Flue-cured tobacco, the period beginning July 1 and ending the following June 30; and

(B) in the case of each other kind of tobacco, the period beginning October 1 and ending the following September 30.

(7) OWNER.—The term ''owner'' means a person that, at the time of entering into a tobacco transition contract, owns quota provided by the Secretary.

(8) PRICE SUPPORT.—The term ''price support'' means a nonrecourse loan provided by the Commodity Credit Corporation through an association for a kind of tobacco.

(9) PRODUCER.—The term ''producer'' means a person that for each of the 1995 through 1997 crops of tobacco (as determined by the Secretary) that were subject to quota—

(A) leased quota or farmland;

(B) shared in the risk of producing a crop of tobacco; and

(C) marketed the tobacco subject to quota.

(10) QUOTA.—The term ''quota'' means the right to market tobacco under a basic marketing quota or acreage allotment allotted to a person under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(11) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(12) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(13) TOBACCO.—The term ''tobacco'' means any kind of tobacco for which—

(A) a marketing quota is in effect;

(B) a marketing quota is not disapproved by producers; or

(C) price support is available.

(14) TOBACCO PRODUCT MANUFACTURER.—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.

(15) TRANSITION PAYMENT.—The term ''transition payment'' means a payment made to a producer under section 1515 for each of the 1999 through 2001 marketing years.

(16) TRUST FUND.—The term ''Trust Fund'' means the Tobacco Community Revitalization Trust Fund established by section 1511.

(17) UNITED STATES.—The term ''United States'', when used in a geographical sense, means all of the States.

Subtitle A—Tobacco Production Transition

CHAPTER 1—TOBACCO TRANSITION CONTRACTS

SEC. 1511. TOBACCO COMMUNITY REVITALIZATION TRUST FUND.

(a) ESTABLISHMENT.—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 amounts paid into the Trust Fund under subsection (d).

(b) ADMINISTRATION.—The Trust Fund shall be administered by the Secretary of the Treasury.

(c) USE.—Funds in the Trust Fund shall be available for making—

(1) buyout payments;

(2) transition payments; and

(3) rural economic assistance block grants under section 1521.

(d) TRANSFER FROM NATIONAL TOBACCO SETTLEMENT TRUST FUND.—The Secretary of the Treasury shall transfer from the National Tobacco Settlement Trust Fund to the Trust Fund such amounts as the Secretary of Agriculture determines are necessary to carry out this title.

(e) TERMINATION.—The Trust Fund shall terminate effective September 30, 2003.

SEC. 1512. OFFER AND TERMS OF TOBACCO TRANSITION CONTRACTS.

(a) OFFER.—The Secretary shall offer to enter into a tobacco transition contract with each owner and producer.

(b) TERMS.—

(1) OWNERS.—In exchange for a payment made under section 1514, an owner shall agree to relinquish the quota owned by the owner.

(2) PRODUCERS.—In exchange for a payment made under section 1515, a producer shall agree to relinquish the value of the quota leased by the producer.

(c) RIGHT TO GROW TOBACCO.—Each owner or producer that enters into a contract shall have the right to continue the production of tobacco for each of the 1999 and subsequent crops of tobacco.

SEC. 1513. ELEMENTS OF CONTRACTS.

(a) DEADLINES FOR CONTRACTING.—

(1) COMMENCEMENT.—To the maximum extent practicable, the Secretary shall commence entering into contracts under this chapter not later than 90 days after the date of enactment of this Act.

(2) DEADLINE.—The Secretary may not enter into a contract under this chapter after June 30, 1999.

(b) DURATION OF CONTRACT.—The term of a contract shall—

(1) begin on the date that is the beginning of the 1999 marketing year for a kind of tobacco; and

(2) terminate on the date that is the end of the 2001 marketing year for the kind of tobacco.

(c) TIME FOR PAYMENT.—A buyout payment or transition payment shall be made not later than the date that is the beginning of the marketing year for a kind of tobacco for each year of the term of a tobacco transition contract of an owner or producer.

SEC. 1514. BUYOUT PAYMENTS TO OWNERS.

(a) IN GENERAL.—The Secretary shall make buyout payments in 3 equal installments, 1 installment for each of the 1999 through 2001 marketing years for each kind of tobacco involved, to an owner that owns quota at the time of entering into a tobacco transition contract.

(b) COMPENSATION FOR LOST VALUE.—The payment shall constitute compensation for the lost value to the owner of the quota.

(c) PAYMENT CALCULATION.—Under this section, the total amount of the buyout payment made to an owner shall be determined by multiplying—

(1) $8.00; by

(2) the average annual quantity of quota owned by the owner during the 1995 through 1997 crop years.

SEC. 1515. TRANSITION PAYMENTS TO PRODUCERS.

(a) IN GENERAL.—The Secretary shall make transition payments in 3 equal installments, 1 installment for each of the 1999 through 2001 marketing years for each kind of tobacco produced, to a producer that—

(1) produced the kind of tobacco for each of the 1995 through 1997 crops; and

(2) entered into a tobacco transition contract.

(b) TRANSITION PAYMENTS LIMITED TO LEASED QUOTA.—A producer shall be eligible for transition payments only for the portion of the production of the producer that is subject to quota that is leased (as defined in section 1503(5) of this Act) during the 3 crop years described in subsection (a)(1).

(c) COMPENSATION FOR LOST REVENUE.—The payments shall constitute compensation for the lost revenue incurred by a tobacco producer for a kind of tobacco.

(d) PRODUCTION HISTORY; PRODUCTION.—

(1) PRODUCTION HISTORY.—The Secretary shall base a transition payment made to a producer on the average quantity of tobacco subject to a marketing quota that is produced by the producer for each of the 1995 through 1997 crops.

(2) PRODUCTION.—The producer shall have the burden of demonstrating to the Secretary the production of tobacco for each of the 1995 through 1997 crops.

(e) PAYMENT CALCULATION.—Under this section, the total amount of the transition payment made to a producer shall be determined by multiplying—

(1) $4.00; by

(2) the average quantity of the kind of tobacco produced by the producer for each of the 1995 through 1997 crops.

CHAPTER 2—RURAL ECONOMIC ASSISTANCE BLOCK GRANTS

SEC. 1521. RURAL ECONOMIC ASSISTANCE BLOCK GRANTS.

(a) IN GENERAL.—From funds transferred from the Trust Fund, the Secretary shall use $200,000,000 for each of fiscal years 1999 through 2003 to provide block grants to tobacco-growing States to assist areas of such a State that are economically dependent on the production of tobacco.

(b) PAYMENTS BY SECRETARY TO TOBACCO-GROWING STATES.—

(1) IN GENERAL.—The Secretary shall use the amount available for a fiscal year under subsection (a) to make block grant payments to the Governors of tobacco-growing States.

(2) AMOUNT.—The amount of a block grant paid to a tobacco-growing State shall be based on, as determined by the Secretary—

(A) the number of counties in the State in which tobacco production is a significant part of the county's economy; and

(B) the level of economic dependence of the counties on tobacco production.

(c) GRANTS BY STATES TO ASSIST TOBACCO-GROWING AREAS.—

(1) IN GENERAL.—A Governor of a tobacco-growing State shall use the amount of the block grant to the State under subsection (b) to make grants to counties or other public or private entities in the State to assist areas that are dependent on the production of tobacco, as determined by the Governor.

(2) AMOUNT.—The amount of a grant paid to a county or other entity to assist an area shall be based on—

(A) the ratio of gross tobacco sales receipts in the area to the total farm income in the area; and

(B) the ratio of all tobacco related receipts in the area to the total income in the area.

(3) USE OF GRANTS.—A county or other entity that receives a grant under this subsection may use the grant in a manner determined appropriate by the county or entity (with the approval of the State) to assist producers and other persons that are economically dependent on the production of tobacco, including use for—

(A) on-farm diversification, alternatives to the production of tobacco, and risk management;

(B) off-farm activities such as education, retraining, and development of non-tobacco related jobs; and

(C) assistance to tobacco warehouse owners or operators.

(d) TERMINATION OF AUTHORITY.—The authority provided by this section terminates September 30, 2003.

Subtitle B—Tobacco Price Support and Production Adjustment Programs

CHAPTER 1—TOBACCO PRICE SUPPORT PROGRAM

SEC. 1531. INTERIM REFORM OF TOBACCO PRICE SUPPORT PROGRAM.

(a) PRICE SUPPORT RATES.—Section 106(f) of the Agricultural Act of 1949 (7 U.S.C. 1445(f)) is amended by adding at the end the following:

''(9) TOBACCO PRICE SUPPORT RATES.—Notwithstanding any other provision of this subsection, the price support rate for each kind of tobacco for which quotas were approved for the 1998 crop shall be reduced by—

''(A) for the 1999 crop, 25 percent from the 1998 support rate for a kind of tobacco;

''(B) for the 2000 crop, 10 percent from the 1999 support rate for a kind of tobacco; and

''(C) for the 2001 crop, 10 percent from the 2000 support rate for a kind of tobacco.''.

(b) NO NET COST TOBACCO FUND.—Section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1) is amended—

(1) by striking ''quota tobacco'' each place it appears and inserting ''tobacco'';

(2) in subsection (a), by striking paragraph (7) and inserting the following:

''(7) the term 'tobacco' means any kind of tobacco for which—

''(A) a marketing quota is in effect;

''(B) a marketing quota is not disapproved by producers; or

''(C) price support is available.'';

(3) in the second sentence of subsection (c), by striking ''contributed by producer-members or'';

(4) in subsection (d)—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) by striking clause (i);

(II) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(III) in clause (ii) (as so redesignated), by striking subclause (II) and inserting the following:

''(II) the amount of per pound purchaser assessments that are payable by domestic purchasers of Flue-cured and Burley tobacco under clause (i); and''; and

(ii) in subparagraph (B)—

(I) by striking ''that, upon'' and all that follows through ''In making'' and inserting ''in making''; and

(II) in the last sentence, by striking ''contributions and'';

(B) in paragraph (2)—

(i) by striking ''producer contribution or''; and

(ii) by striking subparagraphs (A) and (B) and inserting the following:

''(A) from the person that acquired the tobacco involved from the producer;

''(B) if the tobacco involved is marketed by a producer through a warehouseman or agent, from the warehouseman or agent, who may add an amount equal to the purchaser assessment to the price paid by the purchaser;'';

(C) in paragraph (3), by striking '', and use of'' and all that follows through ''of the Fund''; and

(D) in paragraph (7), by striking ''contributions and''; and

(5) in subsection (h), by striking ''contribution or'' each place it appears.

(c) NO NET COST TOBACCO ACCOUNT.—Section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2) is amended—

(1) by striking ''quota tobacco'' each place it appears and inserting ''tobacco'';

(2) in subsection (a), by striking paragraph (5) and inserting the following:

''(5) the term 'tobacco' means any kind of tobacco for which—

''(A) a marketing quota is in effect;

''(B) a marketing quota is not disapproved by producers; or

''(C) price support is available;'';

(3) in subsection (c)(1), by striking ''producers, purchasers,'' and inserting ''purchasers''; and

(4) in subsection (d)—

(A) in paragraph (1)—

(i) by striking subparagraph (A);

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(iii) in subparagraph (A) (as redesignated), by striking ''also'';

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) in the first sentence, by striking ''the amount of the marketing assessment'' through ''association's area and''; and

(II) by striking the second sentence;

(ii) in subparagraph (C)(ii)—

(I) by striking ''sum of the'';

(II) by striking ''producer and''; and

(III) by striking ''producers and''; and

(C) in paragraph (3)—

(i) by striking ''(3)(A)'' and all that follows through the end of subparagraph (B) and inserting the following:

''(3) COLLECTION OF ASSESSMENTS.—

''(A) PURCHASERS.—Except as provided in subparagraphs (B) and (C), an assessment to be paid by a purchaser under paragraph (1) shall be collected from the person who acquired the tobacco involved from the producer.

''(B) WAREHOUSEMAN OR AGENT.—If tobacco of the kind for which an account is established is marketed by a producer through a warehouseman or agent, the purchaser assessment shall be collected from the warehouseman or agent, who may add an amount equal to the purchaser assessment to the price paid by the purchaser.''; and

(ii) in subparagraph (C), by striking ''both the producer and''.

(d) ADMINISTRATIVE COSTS.—Section 1109 of the Agriculture and Food Act of 1981 (Public Law 97–98; 7 U.S.C. 1445 note) is repealed.

(e) CROPS.—This section and the amendments made by this section shall apply with respect to the 1999 through 2001 marketing years.

SEC. 1532. TERMINATION OF TOBACCO PRICE SUPPORT PROGRAM.

(a) PARITY PRICE SUPPORT.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended—

(1) in the first sentence of subsection (a), by striking ''tobacco (except as otherwise provided herein), corn,'' and inserting ''corn'';

(2) by striking subsections (c), (g), (h), and (i);

(3) in subsection (d)(3)—

(A) by striking '', except tobacco,''; and

(B) by striking ''and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers;''; and

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(b) TERMINATION OF TOBACCO PRICE SUPPORT.—Sections 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by striking subsections (a) through (f).

(c) DEFINITION OF BASIC AGRICULTURAL COMMODITY.—Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking ''tobacco,''.

(d) REVIEW OF BURLEY TOBACCO IMPORTS.—Section 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

(e) POWERS OF COMMODITY CREDIT CORPORATION.—Section 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c) is amended by inserting ''(other than tobacco)'' after ''agricultural commodities'' each place it appears.

(f) TRANSITION PROVISIONS.—

(1) LIABILITY.—The amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the effective date of this section.

(2) TOBACCO INVENTORIES.—The Secretary shall issue regulations that require the orderly sale of tobacco inventories held by associations.

(3) NO NET COST TOBACCO FUND.—

(A) IN GENERAL.—Section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1) is amended by adding at the end the following:

''(i) ASSESSMENTS TO COVER NET LOSSES AFTER 2001 MARKETING YEAR.—

''(1) IN GENERAL.—Effective the day after the last day of the 2001 marketing year for the kind of tobacco involved, purchasers and importers of tobacco shall pay no net cost assessments as determined by an association, with the approval of Secretary, and as provided in this subsection.

''(2) BASIS.—The amount of the assessment shall be based on any unpaid past losses, and anticipated future losses, from sales of tobacco inventory.

''(3) COLLECTION.—Assessments shall be collected as provided in subsection (d)(2).

''(4) PENALTY FOR FAILURE TO PAY ASSESSMENT.—Penalties for failure to pay assessments shall be calculated as provided in subsection (h).

''(5) DURATION OF ASSESSMENTS.—Assessments required under this subsection shall be required until—

''(A) all tobacco price support loans, including interest, are repaid to the Commodity Credit Corporation; and

''(B) the Commodity Credit Corporation has been reimbursed for all net losses sustained as a result of price support loans provided through the 2001 crop of the kind of tobacco involved.''.

(B) CONFORMING AMENDMENTS.—Section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1) (as amended by section 1531(b)) is amended—

(i) in subsection (a)—

(I) in paragraph (5), by inserting ''and'' after the semicolon;

(II) in paragraph (6), by striking ''; and'' and inserting a period; and

(III) by striking paragraph (7);

(ii) by striking subsection (b);

(iii) in subsection (d)—

(I) in the last sentence of paragraph (1), by striking ''the amounts which the Corporation will lend to the association under such agreements and'';

(II) by striking paragraph (2) and inserting the following:

''(2) collect the assessment due under paragraph (1) by directly notifying the purchaser or importer of the amount of the assessment and how payment should be made;''; and

(III) in paragraph (3), by striking '': *Provided*, That,'' and all that follows and inserting '', except that, notwithstanding any other provision of law, the association may use amounts in the Fund (including interest and other earnings) for the purposes of reducing the association's outstanding indebtedness to the Corporation associated with 1982 and subsequent crops of tobacco;'';

(iv) in subsection (e)—

(I) in the first sentence, by striking ''or provide'' and all that follows through ''the association''; and

(II) by striking the second sentence; and

(v) in subsection (h), by striking ''(h)(1)(A)'' and all that follows through the end of subparagraph (B) and inserting the following:

''(h) FAILURE TO PAY CONTRIBUTIONS OR ASSESSMENTS.—

''(1) IN GENERAL.—

''(A) PURCHASERS.—Each purchaser that fails to pay an assessment as required by subsection (d)(2) at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco involved for the 2001 marketing year on the quantity of tobacco as to which the failure occurs.

''(B) IMPORTERS.—Each importer that fails to pay an assessment as required by subsection (d)(2) at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, for a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of tobacco for the 2001 marketing year on the quantity of tobacco as to which the failure occurs.''.

(4) NO NET COST TOBACCO ACCOUNT.—

(A) IN GENERAL.—Section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2) is amended by adding at the end the following:

''(k) ASSESSMENTS TO COVER NET LOSSES AFTER 2001 MARKETING YEAR.—

''(1) IN GENERAL.—Subject to subsection (b), effective the day after the last day of the 2001 marketing year for the kind of tobacco involved, purchasers and importers of tobacco shall pay no net cost assessments as determined by an association, with the approval of Secretary, and as provided in this subsection.

''(2) BASIS.—The amount of the assessment shall be based on any unpaid past losses, and anticipated future losses, from sales of tobacco inventory.

''(3) COLLECTION.—Assessments shall be collected as provided in subsection (d)(3).

''(4) PENALTY FOR FAILURE TO PAY ASSESSMENT.—Penalties for failure to pay assessments shall be calculated as provided in subsection (j).

''(5) DURATION OF ASSESSMENTS.—Assessments required under this subsection shall be required until—

''(A) all tobacco price support loans, including interest, are repaid to the Commodity Credit Corporation; and

''(B) the Commodity Credit Corporation has been reimbursed for all net losses sustained as a result of price support loans provided through the 2001 crop of the kind of tobacco involved.''.

(B) CONFORMING AMENDMENTS.—Section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2) (as amended by section 1531(c)) is amended—

(i) in subsection (a)—

(I) by striking paragraph (5); and

(II) by redesignating paragraphs (6) through (8) as paragraphs (5) through (7), respectively;

(ii) by striking subsection (b) and inserting the following:

''(b) ESTABLISHMENT.—Notwithstanding section 106A, the Secretary shall, on the request of any association, and may, if the Secretary determines, after consultation with the association, that the accumulation of the No Net Cost Tobacco Fund for the association under section 106A is, and is likely to remain, inadequate to reimburse the Corporation for net losses that the Corporation sustains under its loan agreement with the association, establish and maintain in accordance with this section a No Net Cost Tobacco Account for the association in lieu of the No Net Cost Tobacco Fund established within the association under section 106A.'';

(iii) in subsection (d)—

(I) in the third sentence of paragraph (2)(A), by striking ''the amounts which the Corporation will lend to such association under such agreements and''; and

(II) by striking paragraph (3) and inserting the following:

''(3) COLLECTION.—Any assessment to be paid by a purchaser or importer under paragraph (1) shall be collected from the purchaser or importer by the Secretary.''; and

(iv) in subsection (j), by striking ''(j)(1)(A)'' and all that follows through the end of subparagraph (B) and inserting the following:

''(j) FAILURE TO PAY CONTRIBUTIONS OR ASSESSMENTS.—

''(1) IN GENERAL.—

''(A) PURCHASERS.—Each purchaser that fails to pay to the Secretary an assessment as required by subsection (d)(3) at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco involved for the 2001 marketing year on the quantity of tobacco as to which the failure occurs.

''(B) IMPORTERS.—Each importer that fails to pay to the Secretary an assessment as required by subsection (d)(3) at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, for a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of tobacco for the 2001 marketing year on the quantity of tobacco as to which the failure occurs.''.

(g) NET GAINS HELD BY COMMODITY CREDIT CORPORATION.—The Secretary shall ensure that the net gains in the No Net Cost Tobacco Account of the Commodity Credit Corporation as of September 30, 2002, equal or exceed the balance in the Account that existed on September 30, 1998.

(h) CROPS.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section and the amendments made by this section shall apply the day after the last day of the 2001 marketing year for the kind of tobacco involved.

(2) NET LOSSES TO THE COMMODITY CREDIT CORPORATION.—Sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2) are repealed effective on the date on which the Secretary—

(A) determines that—

(i) all tobacco price support loans, plus interest, have been repaid by associations; and

(ii) the Commodity Credit Corporation has been reimbursed for all net losses sustained as a result of price support loans provided through the 2001 crop of the kind of tobacco involved; and

(B) publishes a notice of the determination in the Federal Register.

CHAPTER 2—TOBACCO PRODUCTION ADJUSTMENT PROGRAMS

SEC. 1541. TERMINATION OF TOBACCO PRODUCTION ADJUSTMENT PROGRAMS.

(a) DECLARATION OF POLICY.—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking ''tobacco,''.

(b) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking ''tobacco,'';

(3) in paragraph (7), by striking the following:

''tobacco (flue-cured), July 1—June 30;

''tobacco (other than flue-cured), October 1–September 30;'';

(4) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(5) in paragraph (11)(B), by striking ''and tobacco'';

(6) in paragraph (12), by striking ''tobacco,'';

(7) in paragraph (14)—

(A) in subparagraph (A), by striking ''(A)''; and

(B) by striking subparagraphs (B), (C), and (D);

(8) by striking paragraph (15);

(9) in paragraph (16)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B); and

(10) by redesignating paragraphs (16) and (17) as paragraphs (15) and (16), respectively.

(c) PARITY PAYMENTS.—Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking ''rice, or tobacco,'' and inserting ''or rice,''.

(d) MARKETING QUOTAS.—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(e) ADMINISTRATIVE PROVISIONS.—Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking ''tobacco,''.

(f) ADJUSTMENT OF QUOTAS.—Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended—

(1) in the first sentence of subsection (a), by striking ''peanuts, or tobacco'' and inserting ''or peanuts''; and

(2) in the first sentence of subsection (b), by striking ''peanuts or tobacco'' and inserting ''or peanuts''.

(g) REPORTS AND RECORDS.—Section 373 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373) is amended—

(1) by striking ''peanuts, or tobacco'' each place it appears in subsections (a) and (b) and inserting ''or peanuts''; and

(2) in subsection (a)—

(A) in the first sentence, by striking ''all persons engaged in the business of redrying, prizing, or stemming tobacco for producers,''; and

(B) in the last sentence, by striking ''$500;'' and all that follows through the period at the end of the sentence and inserting ''$500.''.

(h) REGULATIONS.—Section 375(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375(a)) is amended by striking ''peanuts, or tobacco'' and inserting ''or peanuts''.

(i) EMINENT DOMAIN.—Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—

(1) in the first sentence of subsection (c), by striking ''cotton, tobacco, and peanuts'' and inserting ''cotton and peanuts''; and

(2) by striking subsections (d), (e), and (f).

(j) BURLEY TOBACCO FARM RECONSTITUTION.—Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended—

(1) in subsection (a)—

(A) by striking ''(a)''; and

(B) in paragraph (6), by striking '', but this clause (6) shall not be applicable in the case of burley tobacco''; and

(2) by striking subsections (b) and (c).

(k) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the Act entitled ''An Act to amend the Agricultural Adjustment Act of 1938, as amended, to provide for acreage-poundage marketing quotas for tobacco, to amend the tobacco price support provisions of the Agricultural Act of 1949, as amended, and for other purposes'', approved April 16, 1965 (Public Law 89–12; 7 U.S.C. 1314c note), is repealed.

(l) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The Act entitled ''An Act relating to burley tobacco farm acreage allotments under the Agricultural Adjustment Act of 1938, as amended'', approved July 12, 1952 (7 U.S.C. 1315), is repealed.

(m) TRANSFER OF ALLOTMENTS.—Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(n) ADVANCE RECOURSE LOANS.—Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking ''tobacco and''.

(o) TOBACCO FIELD MEASUREMENT.—Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) is amended by striking subsection (c).

(p) LIABILITY.—The amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the effective date under subsection (q).

(q) CROPS.—This section and the amendments made by this section shall apply with respect to the 1999 and subsequent crops of the kind of tobacco involved.

Subtitle C—Funding

SEC. 1551. TRUST FUND.

(a) REQUEST.—The Secretary of Agriculture shall request the Secretary of the Treasury to transfer from the Trust Fund amounts authorized under sections 1514, 1515, and 1521 to the account of the Commodity Credit Corporation.

(b) TRANSFER.—On receipt of such a request, the Secretary of the Treasury shall transfer amounts requested under subsection (a).

(c) USE.—The Secretary of Agriculture shall use the amounts transferred under subsection (b) to carry out the activities described in subsection (a).

(d) TERMINATION OF AUTHORITY.—The authority provided under this section shall expire on September 30, 2003.

SEC. 1552. TOBACCO RELATED ADMINISTRATIVE COSTS AND SUBSIDIES.

(a) IN GENERAL.—The Secretary shall provide, by regulation, for a nonrefundable marketing assessment paid by purchasers of tobacco during each of the 1999 through 2024 fiscal years.

(b) BASIS.—The assessment shall be—

(1) on a per pound basis, as determined by the Secretary; and

(2) based on estimated annual costs to the Federal Government of tobacco related administrative costs and subsidies in accordance with this section.

(c) AGGREGATE ASSESSMENT AMOUNT.—For each fiscal year, the Secretary shall estimate the costs to the Federal Government relating to tobacco that involve—

(1) agricultural extension;

(2) handling, sampling, grading, inspecting, and weighing;

(3) administering and providing subsidies for crop insurance; and

(4) administering the tobacco price support program for each of the 1999 through 2001 fiscal years.

(d) ASSESSMENT AMOUNT FOR EACH KIND OF TOBACCO.—For each fiscal year, the Secretary shall determine the amount of the total costs determined under subsection (c) that benefit each kind of tobacco.

(e) ESTIMATED MARKETINGS.—For each fiscal year, the Secretary shall estimate the pounds marketed during the fiscal year for each kind of tobacco.

(f) ASSESSMENT RATE.—For each kind of tobacco for each fiscal year, the Secretary shall calculate an assessment rate per pound by dividing—

(1) the amount determined under subsection (d); by

(2) the estimated pounds marketed as estimated under (e).

(g) REMITTANCE BY PURCHASER.—For each fiscal year, each purchaser of tobacco shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment equal to the amount obtained by multiplying—

(1) the assessment rate for the kind of tobacco purchased; by

(2) the number of pounds of the kind of tobacco purchased.

(h) PENALTIES.—If any purchaser fails to remit the assessment required by this section or fails to comply with such requirements for recordkeeping as are established by the Secretary to carry out this section, the purchaser shall be liable to the Secretary for a civil penalty in an amount determined by the Secretary that does not exceed the amount obtained by multiplying—

(1) the quantity of the kind of tobacco involved in the violation; by

(2) the assessment rate for the kind of tobacco.

(i) ENFORCEMENT.—The Secretary may enforce this section in the courts of the United States.

SEC. 1553. COMMODITY CREDIT CORPORATION.

The Secretary may use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this title and the amendments made by this title.

Subtitle D—Miscellaneous

SEC. 1561. LIABILITY FOR OBLIGATIONS OF TOBACCO PRODUCT MANUFACTURERS.

A person that owns or produces tobacco, or owns or operates a tobacco warehouse, shall not be liable for—

(1) any action or legal penalty or obligation of a manufacturer of a tobacco product under this Act; or

(2) any financial penalty or payment owed by a manufacturer of a tobacco product under this Act.

SEC. 1562. FDA REGULATION OF TOBACCO PRODUCTION AND FARMS.

Notwithstanding any other provision of law, an officer, employee, or agent of the Food and Drug Administration shall not—

(1) regulate the production of a crop of tobacco by a person; or

(2) enter the farm of a person that owns or produces tobacco without the consent of the person.

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ROBERTS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I have reached an understanding with the Senator from South Carolina and the Senator from Kentucky and the Senator from Massachusetts that the Senator from Kentucky would like to speak for half an hour. Senator FAIRCLOTH will be recognized for his first-degree amendment following the statement by the Senator from Kentucky. Following that it is our understanding there will either be a second-degree amendment to the Faircloth amendment, or, if not, the Faircloth amendment will be disposed of, and following that it was our understanding that the other side of the aisle would have the next amendment, and go back and forth as is the tradition of this body, from one side to the other with amendments. All amendments which are in the first degree will be open, obviously, to second-degree amendments. As the Faircloth amendment would be open to second-degree amendment, so will the next Democrat amendment be open to second-degree amendments.

I expect shortly the Senator from Kentucky to come to speak for approximately half an hour. The Senator from North Carolina is agreeable. I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, if I could simply clarify that, also I think we would put it in the context of the unanimous consent request that first recognition be for the half hour to the Senator from Kentucky. But if I could clarify it, we would request that the second-degree amendments would be the right of the Democrat leader, and, likewise, the first-degree amendment placed on the Democrat side would be subject to a second-degree amendment by the Republican side. With that understanding, we ask unanimous consent the Senate accept that as the procedure for the first two amendments.

Mr. MCCAIN. Will the Senator yield? I am afraid at this time we just have to have an understanding because it has not been cleared on either side. I am confident that understanding would be honored. But I don't think we can lock it in as a unanimous consent agreement at this time. I would like to have the Senator from Kentucky, if it is agreeable to my friends from South Carolina and Massachusetts, to have the Senator from Kentucky recognized for his statement.

I yield the floor.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. FORD. Mr. President, we are going into probably what can be called a frustrating period. It is difficult for me to in 30 minutes say what is in my heart and on my mind as it relates to the tobacco legislation.

The PRESIDING OFFICER. If the Senator will suspend, we need order in the Senate please. If Senators and staff will take their audible conversations to the cloakroom, it would be appreciated. The Senator from Kentucky is recognized.

Mr. FORD. I thank the Chair for his courtesies. He is a gentleman and a scholar.

Mr. President, today the Senate begins what I hope is a productive debate on S. 1415, the National Tobacco Policy and Youth Smoking Reduction Act. We have come a long way in this debate. But in the 15 weeks left in this session we also have a long way to go.

Nothing surprises me anymore concerning tobacco legislation. Yesterday afternoon they asked me if I was surprised. I said no. I was angry. So, therefore, I wasn't surprised. Last year, I would not have believed the tobacco manufacturers, attorneys general, and public health groups would

have agreed on a comprehensive settlement. But on June 20, 1997, a national settlement was announced. I would not have believed that the Senate Commerce Committee could have reported a bill of this magnitude, and to do so in only one day of markup. But on April 1st, under the leadership of the Senator from Arizona, the Commerce Committee did just that by a vote of 19 to 1. Last Thursday, the Finance Committee modified the bill again in only one day.

But part of the explanation for the success of the chairman of the Commerce Committee was his ability to get Senators to wait to debate many issues. A lot of them were left to the Senate floor. This bill raises hundreds of billions of dollars. Estimates of the Commerce Committee product range from $516 billion to almost $1 trillion. This is a tremendous amount of money by any standard. The Finance Committee increased the taxes raised by this bill even further.

But not surprisingly, there is no shortage of ideas around here on what to do with the money. Some want to use it to offset tax cuts. Some want to expand existing spending programs. Some want to fund new spending programs. The one thing nearly all of these ideas have in common is that they have nothing to do with youth smoking. We have taken our eye off the problem of youth smoking. It is how can we raise more money and spend it on other programs.

Somehow, almost miraculously, the two committee chairmen were able to get members of their committee to defer the debate on how to spend all of this money. But that debate cannot be deferred any longer, Mr. President—not if the Senate is actually going to pass a bill. With the confusion that was expressed here yesterday, there are some who are beginning to wonder if a bill can be passed.

How all of this money is used goes to the very heart of the bill, and until we answer these fundamental questions, it is impossible to say with any certainty what kind of bill we have. Mr. President, there is an equally important issue that goes to the heart of the bill as well. It will define what this legislation is really all about. There is no more important issue to me personally than how we treat tobacco farmers and rural and tobacco-growing communities under this bill.

In many ways, tobacco farmers and tobacco-growing communities are the innocent victims in this whole debate. They have not been sued. They have not been accused of withholding documents or information. They have not been accused of manipulating the tobacco grown on their farms.

Mr. President, tobacco farmers and tobacco-growing communities are scared about what is going on in Washington, DC. They are bewildered at the almost daily barrage of hostile comments coming from various sources in this city. Most tobacco farmers are engaged in the same livelihood as their fathers, their grandfathers, and in some cases their great grandfathers on the same farm and on the same ground.

Just like most Americans, tobacco farmers also don't want to see young people smoke. The poll in my State was something over 90 percent that opposed youth smoking. But they are having a hard time figuring out what some of the difficulties in Congress have to do with youth smoking. To most tobacco farmers much of the discussion in Congress sounds like an attempt to punish an industry with the youth smoking issue finishing a distant second. Tobacco farmers are being lumped in with tobacco manufacturers.

A recent Congressional Quarterly article about the plight of tobacco farmers quoted one farmer from King, NC, about the tobacco debate in Congress. He said, and I quote:

> They are making us feel like drug dealers. That just burns me up. They put us in the tobacco industry when all we are doing is growing a legal crop.

Tobacco farmers have been on a roller coaster ride for several years. But that ride has been almost out of control for the last year. Among the greatest disappointments was the June 20th settlement agreement itself. That agreement, which threatens to throw the lives of tobacco farmers into turmoil, did not provide one thin dime for tobacco farmers. Zero. Zip.

The tobacco companies, attorneys general, and public health groups who were huddled in hotel rooms putting the deal together did not even invite tobacco farmers to the table. They would not let them in the door. It is tough to find words to express how insulting I found this.

The June 20th tobacco settlement included money for event sponsors who would lose tobacco sponsorship under the settlement. The settlement had money for teams or entries in such events. They had money for NASCAR races. They had money for rodeos. Somehow, they found $750 million for these people. But there was nothing for tobacco farmers.

Mr. President, tobacco farmers in my state were at first shocked by news of the settlement. Then they became angry. I encouraged them not to get mad, but to get to work. I urged them to come up with a plan for themselves, to help tobacco farmers and tobacco growing communities deal with the settlement. And Mr. President, tobacco farmers did go to work. I pledged to them last summer that I would do everything in my power to represent their interests, and to see to it that a proposal drafted by tobacco farmers would be included in any legislation considered by Congress. I'm here today to keep my word.

Mr. President, there are 124,000 tobacco farm families producing the crop across 20 states in this country. That represents 6 percent of the farms in the United States. Most of these farms are in the southeast. On average, these tobacco farms are 126 acres—about one-third the size of the average U.S. farm. So we're talking about small, family farm operations.

In Kentucky, tobacco is produced in 119 of 120 counties. Two-thirds of the farmers in my state produce tobacco. They average about 4 acres of tobacco. It is less than 3 percent of their cropland, yet it brings about 25 percent of their farm income. Most tobacco farmers in my state have family incomes of less than $35,000—including non-farm income. Make no mistake, we're talking about middle to low-income families.

The tobacco settlement will have a significant negative impact on the family farms in my state, and this impact must be considered in any tobacco legislation.

Tobacco farmers started meeting last summer to deal with the impact of the settlement. They came up with three general principles for tobacco settlement legislation: (1) the legislation must preserve the federal tobacco program; (2) fair compensation should be provided to tobacco farmers should their ability to produce the crop be diminished; and (3) the impact on tobacco farming communities should be taken into account.

Mr. President, farms in my State and other States are valued with the quota. If the quota under the so-called Lugar-McConnell bill is implemented, from $2 billion to $4 billion in reduction of farmland value will occur in the fourth year because we lose the quota. What does that do? It has a rippling effect on local taxes, the tax base, the income for the cities and the counties, our school systems, to say nothing of the business community of these small communities.

After countless meetings among tobacco farming groups from states like Kentucky, North Carolina, South Carolina, Tennessee, Virginia, and Georgia, an outline of a tobacco farmer proposal came together. We worked hard to iron out details and put ''meat on the bones.''

I daresay, Mr. President, there are not many Senators who have sat on the porch of many grocery stores and talked to farmers. There are not many Senators in this body who have sat in the kitchen and had a cup of coffee with farm families, talking about what is about to happen to them and their future. I think I understand and feel what they say because I grew up on a farm and I raised tobacco until I was drafted into World War II.

Finally, last October, I introduced the Long-term Economic Assistance for Farmers Act, or one we refer to as the LEAF Act. It was cosponsored by 9 tobacco state Senators.

But our work didn't stop there. We continued to work through the winter and spring to improve the proposal. Finally, after nine months of work, a consensus proposal was developed to assist tobacco farmers and their communities.

We have provided direct payments to farmers in the event their ability to

produce declines. This is the very heart of the LEAF Act. It is designed to make farmers whole as the value of their assets decline.

We also made changes to make tobacco companies pay for any possible administrative provisions associated with the tobacco program. Mr. President, I have been working for 16 years to eliminate any opportunity for critics to claim that there is a tobacco ''subsidy.'' In 1982, we started requiring tobacco farmers to pay for the tobacco loan program. I worked closely with Senator HELMS to achieve these changes. Senators THURMOND, HOLLINGS, and WARNER were all in the Senate at that time, and will remember these changes.

In 1986, we required tobacco companies to share in these costs. The tobacco loan program has operated at no net cost to taxpayers since that time. Still, there were criticisms. Salaries at USDA, crop insurance, and extension services all are partially attributable to tobacco. Mr. President, under the LEAF Act, all of these costs—and any other conceivable USDA cost associated with tobacco—will now be paid by tobacco companies. There will no longer be any basis, directly or indirectly, to allege that there is a tobacco subsidy. All possible taxpayer costs have been eliminated under the LEAF Act.

And you know something, Mr. President. Our tobacco farmers make an extra payment, a deficit reduction payment that is taken out of their check before they get it from the warehouse and it goes to the general fund. Last year, it was almost $32 million. And not another farmer in this country—maybe the peanuts—makes a payment out of their check called a budget reduction payment. It was over $32 million last year.

Mr. President, we have wanted to look beyond the tobacco farmer and the tobacco program. The LEAF Act attempts to take a broader view and deal with the entire impact on tobacco communities and the next generation.

Why is it so important? We had to have some financial underwriting of the 13 colonies—and that was tobacco through Virginia. They underwrote the debt of the colonies. It has been around a long time. ''Mr. Jones came in to buy his spring planting and paid for it with some of the finest tobacco I have seen''—a quote from history. That was before we became colonies. The pages of Virginia history are splattered with tobacco juice. Just think about it. And they want to do away with it overnight. It cannot be done.

We've included economic development assistance. We've included grants for higher education for the children of tobacco farm families. And we have included assistance for displaced workers who have jobs in warehousing, processing, and manufacturing tobacco. We understand things are changing for tobacco and we want to prepare these communities.

Mr. President, I'm grateful to Senator MCCAIN for his leadership in including the LEAF Act as Title Ten of S.1415. It's an essential part of the overall picture. It must be included in any tobacco settlement legislation. The LEAF Act has broad support among tobacco farming groups. It's supported by the public health community. President Clinton, who visited Kentucky in April, announced that the LEAF Act satisfies his fifth principle for tobacco legislation of providing assistance to tobacco farmers and tobacco growing communities.

But let me provide fair warning, Mr. President. I will keep my pledge to my tobacco farmers. I will do everything in my power to oppose attempts to undermine the LEAF Act, or attack the federal tobacco program, or threaten the ability of tobacco farmers in my state to deal with the impact of the national tobacco settlement.

How many farmers out there have 98 percent of their product controlled by four companies? There is no leverage. The tobacco farmers have no leverage if we don't have a tobacco program. We have four companies that handle 98 percent of all the product, so if we don't have that, we are at their mercy.

I don't know how many farmers around here have heard of ''farm buy.'' They just go directly to the farm and buy it from big farmers, and the small farmer is gone, has no leverage whatsoever. And, as we see, people attack the farm program. A proposal has been made which is nothing short of a thinly veiled bribe to offer larger tobacco farmers a promised lump-sum payment in exchange for eliminating the tobacco program. We found out yesterday it is not a lump sum payment, it is 3 years. And if you look at the bill that was introduced, that is before the Senate, 50 percent of all the money goes to the States and 40 percent of that money will be taken up by the McConnell-Lugar bill. That leaves 10 percent for everybody else. But in the bill it says only 16 percent of the money can go to the farmer.

Where are we on this—40 percent we would have to take in order to pay for it, yet the bill says only 16 percent? We are going to try to correct that if we can, because it is talking out of both sides of the mouth, and you can't do that around here—only for awhile.

This is a classic example of Washington telling people, ''We are smarter than you.'' But it simply won't work. Tobacco farmers want to keep a supply management program. For 3 years, every 3 years, farmers vote on whether to keep the tobacco program. Earlier this year, farmers of flue-cured and burley tobacco, the two largest types of tobacco, voted overwhelmingly to keep the program. In a referendum conducted by USDA for both types of tobacco, almost 98 percent of tobacco farmers voted to keep the program. But now some in Congress want to tell farmers that, ''We are smarter than you.'' That is what is wrong with this place. That is why people don't like us. There are 98 percent of a group saying, ''This is what we would like to have and what we would like to keep.'' And what do we say up here? ''You don't know what you are talking about. This is what is good for you. This is what is good for you. So you don't know what you are talking about, and we are going to take care of it for you.''

So, 98 percent of those down there who voted, it doesn't make any difference what you do. This is typical Washington, DC, arrogance. I have already discussed how my small, average tobacco farmer—there are 124,000 of those, but there are only 4 large manufacturers, controlling over 98 percent of the cigarette market. This disparity in bargaining power could not be greater. Unless tobacco farmers have some mechanism to bargain together jointly, they are helpless; they are helpless in dealing with the large tobacco manufacturers. The tobacco program provides that mechanism, and it must not be tampered with as a part of this legislation.

The focus of the bill should be, must be, youth smoking. I voted for smoke-free schools. I have voted, tried every way I can, to stop youth smoking. So I have no apologies to make, because I want to stop it. Over 90 percent of the people polled in my State want to stop it. But the focus of this bill must be on youth smoking, which is to focus on what will work to reduce youth smoking.

Youth smoking rates peaked in the 1970s. Starting in about 1979, youth smoking rates began to decline and continued to decline through the 1980s. Then, about 1991 or 1992, they started to climb again. No one knows exactly why. And guess what; youth alcohol use started to go up at the same time, binge drinking started to go up, marijuana use started to go back up. In fact, youth usage of marijuana has been increasing faster than cigarette smoking during the 1990s. So far, Congress has failed to look broadly at all these trends. Surely this is more than a coincidence. When we look at the causes of youth smoking increases, we should also look at drinking and illegal drug use.

The American people seem to have a better sense of that than Congress. They seem to realize that teenage behavioral changes are more complex than just tobacco, and the youth tobacco rates have been influenced by more than just slick advertising by the tobacco industry. In fact, one recent poll verified these opinions. A Tarrance Group/KRC research poll conducted earlier this month asked people why they thought youth smoking rates had been going up. Mr. President, 58 percent said the influence of peers and friends was the main reason; 18 percent said the parents' example was the main reason; 12 percent said Hollywood, television, and popular culture were the main reasons; and only 6 percent said the tobacco industry and advertising

were the main reasons—only 6 percent. So we have a lot more to learn about this issue, and I think, really, how little we do know should have an influence on how broad we make this legislation.

I have serious concerns about the size of the legislation. These concerns existed even before the Finance Committee took its action to increase the size of the bill. First, the bill as reported by the Commerce Committee appears to contain language never considered by the committee on April 1. I am specifically referring to the annual payments made by the industry. In the McCain committee amendment adopted by the committee, the annual payment starting in the sixth year was set at $21 billion, plus an adjustment up for inflation and down for volume. However, in the reported bill, the sixth-year payment is the ''adjusted applicable base amount,'' which it defined as the amount of the preceding year, which appears to be $23.6 billion. I do not know where the language came from. I do not recall it ever being approved by the committee. However, it appears they add $2.6 billion per year for 20 years to the cost of the bill. In other words, it appears that $52 billion has been added to the cost of the bill. I hope we can clear up some of these things.

Mr. President, OMB proceeded to take a number of misleading steps to achieve competing objectives. They totally omitted the bill's revenue impact on prices in several respects. They ignored any costs from future legislation and attorneys' fees. They ignored additional regulatory costs of complying with the bill. They ignored price increases resulting from higher sales taxes, State excise taxes, wholesale and retail margin increases, manufacturers' future price increases, and they ignored the new licensing fee in title XI.

But perhaps the most offensive manipulation by OMB involved their conflicting projected volume declines. OMB projected youth smoking would decline by 60 percent when calculating the look-back penalties, but they projected youth smoking to decline by only 29 percent when calculating the price-per-pack increase.

As we say down in Kentucky, there is something about that that ain't right. But you need a small consumption decline to make the price-per-pack increase smaller. OMB just had it both ways. They changed the projections to say the bill costs $516 billion and raises the price by $1.10.

Mr. President, I have Wall Street Journal analyses, I have all these things I could read here this morning. I don't know how much time I have left. It is probably getting close to the time.

The PRESIDING OFFICER. The Senator has approximately 4 minutes remaining.

Mr. FORD. Good. I thank the Chair.

Let me also outline several other concerns I have with S. 1415 which I hope can be corrected or improved during the debate.

First, we have continuing concerns about the potential for a black market. We say we can stop that, but Mexico sells cigarettes that I smoke for 90 cents to $1 a pack at retail. Indian reservations are selling cigarettes at a retail of around $1.20. If these new estimates are correct, we are creating a disparity in price of up to $4 a pack. This is well above the level experts say will cause black market activity. In fact, we already have a considerable amount of smuggling in this country because of the large State excise tax increases in recent years. A disparity in price of only 50 to 60 cents per pack has already proven to be enough to create black market incentives, and they are going on right now within our own country. Canada fussed at us, you know, when they raised their prices. Now we have two borders.

We raised prices that come from Canada and from Mexico, the Caribbean and wherever. These fellows do pretty good out there. They are called cartels. We have had a hard time stopping drugs from coming in. What are we going to do when cigarettes are added to that? When you go down to the skid, ''You want some cheap cigarettes or I have another menu on the other side over here starting with marijuana.'' It is interesting how we are going to provide for that and are playing into the hands of those people.

The international provisions of title XI sets dangerous precedents, Mr. President. If it were any other product, this would not even be tolerated. I hope title XI can be eliminated or substantially improved.

I have concerns that the bill gives the FDA excessive authority to do what I suspect they wanted to do for the last several years—ban the product. It is my hope that we can place reasonable limits on the unbridled authority.

Several serious constitutional concerns have been identified, particularly since the tobacco manufacturers are unlikely to sign on to this legislation. Late last month, four State attorneys general sent a letter to Senator HATCH outlining these concerns. Constitutional concerns throw into jeopardy the advertising and marketing restrictions, the upfront payment, the look-back provisions, the document disclosure section, and the so-called corporate culture language.

These are legitimate concerns. Each one will have a suit filed. It will be completed. They will file another suit. It will be completed, and we will be in court under these provisions for a long, long time. I hope these concerns can be addressed as well.

Mr. President, a recent Wall Street Journal poll showed that Americans have serious doubt about the motives behind this debate. By a nearly 2-to-1 margin, a majority of the people thought the current debate was more about raising taxes to pay for new programs than it was about reducing youth smoking. We have a chance to change some views with the way this debate on the bill is conducted and the final product.

I have two overriding tests for the final product produced on this floor: No. 1, does the bill adequately compensate and protect farmers and farming communities? And No. 2, is the bill more about reducing youth smoking or punishing an industry?

I look forward to the debate and the opportunity to find the answers to many of these problems. I say to the Chair and to my colleagues in the Senate that I am going to do whatever I can to be sure that the farming community is protected in this bill. With the procedure that occurred late yesterday, to undo all of the work for 10 long months that many of us have put into this legislation, to undo it in a motion is a serious thing. I think it rubbed some of us a little bit the wrong way, as we say. There will be some scorched-Earth approach as we develop this. If we can work out something, I would love to do it. But I will not work out anything that does not compensate and take care of the farmers who I am here to represent, and I intend to represent them as long as I can stand and as long as people will listen to me. I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. KERRY. Mr. President, if I can just inquire, it was my understanding—if I can just inquire——

Mr. GRAMM. I yield without losing my right to the floor, Mr. President.

Mr. KERRY. I understand. I ask the Senator from Texas how long he will be speaking, because I understood the Senator from North Carolina was going to offer an amendment.

Mr. GRAMM. Mr. President, I want to make an opening statement on the bill. I want to cover quite a few areas. I always try to be brief but it is going to take me a reasonable amount of time to complete my statement. What I would like to suggest is that I go ahead and make my opening statement—and I will try to do it as briefly as I can—and then I will yield the floor and allow the normal process to continue.

Mr. KERRY. I thank the Senator.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator is recognized.

Mr. GRAMM. Mr. President, I begin by congratulating our dear colleague, Senator MCCAIN, for the leadership he has provided on this bill. Senator MCCAIN was asked to report a bill out of the Commerce Committee. He didn't get an opportunity to choose who was on the committee. He didn't get the opportunity to write the bill as he would have chosen to write it. But his mission, as assigned him by the majority leader, was to report a bill from the Commerce Committee.

Serving as a member of the Finance Committee which got sequential referral of this bill and, in the process,

made the bill worse, I begin by saying that no matter where I end up on this bill, I congratulate Senator MCCAIN for the work he has done in bringing the best bill he could, given the committee he had to work with and the many interests competing against each other on this bill.

While we are not on the same side today, I hope that at the end of the process, after conference, perhaps we will be on the same side, but I want to make it clear that, in my opinion, it is unfortunate that when we debate a big issue—and this is a very big issue—often we stand on the floor of the Senate and talk about things that not only don't mean very much to the American public, but often don't mean very much to us.

Today we are debating a very big issue: hundreds of billions of dollars of taxes, hundreds of billions of dollars of spending, a high and noble purpose trying to prevent children from smoking and, in the process, affecting their health. So this is a big issue.

I simply lament that so much of the debate is tainted by trying to impugn the motives of people who are engaged in the debate. We have all seen ads run in the paper that refer to this as the McCain bill which is aimed at raising taxes and increasing spending. The bill does raise taxes, it does increase spending, but that is not the intent of the Senator from Arizona. There is no doubt in my mind that he has brought us the best bill that his committee was capable of writing.

Let me also say that anyone who opposes the bill knows that they are immediately going to be tarred as being the spokesman for the tobacco industry, which in this debate has become the embodiment of all evil on this Earth. I just lament, going into the debate, that we cannot simply debate the issues without getting into impugning the motives of the people who are involved in the debate.

While it may sound trite to many people who might watch this debate, let me say that I believe that for all practical purposes, everyone involved in this debate in the Senate is trying to do what they believe is right, and they are neither the servant, in their own minds, at least, of those who want a massive increase in taxes and spending, nor are they the servant of the tobacco industry.

It is a shame that when you debate a really important issue, that rather than being able to simply focus on the substance of the issue, you end up being pigeonholed, with the debate focused around whose interest you supposedly speak for.

Obviously, the first question we have to ask on this bill is, What is the primary effect of the bill? This bill, obviously, raises taxes by hundreds of billions of dollars. Depending on the estimates you look at—they vary greatly—there is as much as a $200 billion difference in the estimates as to how much money this bill raises. But once you get to $500 or $600 billion, arguing about another $100 or $200 billion does not really add much to the debate.

The bottom line is this bill is a huge tax bill by any definition of ''tax bill.'' It is also a massive spending bill. In fact, we will have never passed a bill—let me state it as my opinion. In trying to look back and attempt to fit this bill into the broad range of legislation dealt with by Congress, it is hard for me to find an initiative that is this big in terms of its fiscal impact since Lyndon Johnson was President in the first year after the Kennedy assassination. So this is a big bill—big taxes, big spending, and a big and noble objective.

The first point I would like to comment on is, Is this about tax and spend, or is this about children smoking? We have ads in the newspapers every day arguing one point or another. We have ads running in many of the States urging our colleagues to not band together with the cigarette companies against our children. We have ads in the paper urging other colleagues to not participate in tax or spend. How can you ferret out what the truth is? Well, obviously, it is a very difficult task. But let me tell you what I think are some of the hallmarks we ought to look at in trying to ferret out the truth.

Let me try first to define the question more precisely. Are we raising tobacco taxes to prevent children from smoking or to fund new spending programs? It seems to me that is a fair question to begin with in this debate. And let me tell you what I think would be some of the hallmarks you would find if the tax increase were to deter smoking rather than to fund programs and the hallmarks you would find if it had instead become a piggy bank for massive new spending.

If the objective of the tax increase was simply to discourage smoking, then I think what we would find would be an effort to give the money back in tax cuts because the objective would be to affect the price of cigarettes, not—Mr. President, could we have order?

The PRESIDING OFFICER. The Senator is correct. If we could take audible conversations from the floor to the cloakroom.

Mr. FORD. I am glad it is audible.

The PRESIDING OFFICER. If we could take the less audible conversations to the cloakroom, it would be appreciated.

Mr. GRAMM. I thank the Chair.

The PRESIDING OFFICER. The distinguished Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I think if you were looking at a rational policy to deter the consumption of an item by raising its price, but your objective was not to collect a huge amount of money to spend and your objective was solely to get people to reduce their consumption of that product, it seems to me that one of the hallmarks of such a program, one of the outward and visible signs of that objective, would be the imposition of an excise tax to raise the price of that product. But you would try to offset the bulk of that with a tax cut that was more or less aimed at giving tax cuts to people in the same income groups as those who would be paying the higher taxes so that you would not be lowering their real income.

But in this case, I simply note, Mr. President, in looking at this bill we do not see that happening. In this bill, we are seeing hundreds of billions of dollars of new taxes, but we are seeing none of this money given back to the people who are paying these taxes. So I would think that is evidence that raising revenues to fund new spending plays a significant role in this bill and in the final outcome of the bill, whether or not that is the stated objective of the legislation.

I think a second hallmark of a bill that has turned into a giant piggy bank would be the kind of spending which occurs—have you ever noticed when you are spending your own money you tend to spend it pretty prudently, but when suddenly you have an opportunity, a financial bonanza to spend someone else's money, the spending becomes very, very careless?

Well, I would pose as a question, in trying to determine if this is about children or about money—what evidence is there in this bill of careless spending? I want to just present two pieces of evidence. The first has to do with payments to attorneys. I know many Members of this body are attorneys, and I am not going to get into all this business about ''some of my best friends are attorneys,'' and I am not trying to bash attorneys, but I am trying to make a point about spending at a level that could only suggest this bill has become a piggy bank for massive new spending.

Let me begin by looking at the amount of money going to attorneys out of this bill.

By almost anybody's measure, this bill will, if adopted, set out a procedure where attorneys who have been involved in these cases will get a payment of at least $4 billion. Now, nobody knows what $1 billion is. Maybe Ross Perot does, but few others know what $1 billion is, so let me try to convert it down to English.

In the lawsuits which have been settled and where billings have been submitted lawyers are said to be seeking $5.7 billion.

Now, let me try to convert that into something which people can understand. If the lawyers who have worked on these cases were paid $1,000 an hour for an estimated total of 200,000 hours they have spent on the lawsuits which have occurred to date, they would be owed $200 million, but they are reported to be seeking $5.7 billion or close to an average of $30,000 an hour and the effective rate of compensation in this bill could be—let me swallow before I say the number—$100,000 an hour. Now, I ask my colleagues, what kind of legislation would we ever pass,

in representing the 260 million people who live in this country, that would pay anybody $100,000 an hour to do anything? The plain answer, we all know, is that we would never, ever, pass an appropriations bill that compensated somebody at $100,000 an hour. In fact, we would be very much challenged and probably criticized—and probably justly—if we were compensating people $1,000 an hour.

Now, what does it suggest about this bill? Let me make it clear, we are going to have a debate about lawyers' fees, and I will have a lot to say when we have the debate, but my purpose here is not to mock the fact that we could be paying $100,000 an hour to lawyers under this bill. My point is a far more important point, and that is, how could you have a bill that paid $100,000 an hour? The only way you could have a bill that paid $100,000 an hour is if you had put together a bill that had massive amounts of money that are not viewed as money that has come from real taxpayers and, therefore, you have sort of a ''slam it up against the wall'' kind of approach to distribute the money. Only in a bill where the objective was to raise revenue and spend it without any regard for the priorities of spending it could you possibly end up with a bill that would compensate attorneys at $100,000 an hour—especially a bill that is sanctioned by the Federal Government and especially a bill where the money is coming not from tobacco companies but from people who are in families, 73 percent of them, that make less than $50,000.

A look at the lawyer fees in this bill is an important piece of evidence, it seems to me, that needs to be looked at in this debate as to whether this is about smoking or whether it is about money.

The next issue is equally controversial, and I am not going to debate it here. I will probably get into the debate when we have amendments about compensation to tobacco growers, but I want to make the same point about the tobacco settlement with farmers that I made about the lawyers. Let me give a little short course on the history of American tobacco policy. Again, my purpose is not to criticize the policy of the settlement but to make the point about how careless we have been in spending the hundreds of billions of dollars that are entailed in this bill.

The tobacco program started in 1938 as a way of trying to raise the price of tobacco. It was a program instituted by the Government to benefit the tobacco grower, and it was a program where we provided a production quota where the people who were growing tobacco in 1938 received quota based on the number of acres they were growing. The idea was to limit production, to keep people out of the tobacco-growing industry, and to make the price of tobacco products higher than they would be in a competitive market. Not singling out tobacco here, we did it for virtually every other crop, but that is how the program started. The program was an effort to use Government power to benefit tobacco farmers, something not uncommon. We use Government power all the time to promote the interests of many groups, generally at the expense of the consumer.

Now, what has happened over time is that more and more of the people who own these quotas have moved off to the big cities, and when we are talking about compensating tobacco farmers, you get the idea that we are talking about compensating people who are actually growing tobacco. The great bulk of every proposal that has been made—from the Ford proposal to the Lugar proposal, to the Kennedy proposal, to the Robb proposal—a lot of proposals, but virtually all of these proposals are focused fairly narrowly on compensating people who own the quotas, not the people who grow the tobacco.

Now, why is this important? It is important because 63 percent of the quotas that the Government gave away in the first place are owned by people who don't grow tobacco. So when we are going to compensate under this program in the name of helping tobacco farmers, the truth is that the great bulk of the money is going to people who don't grow tobacco but they have often become very wealthy people by owning a benefit which the Government gave them, and they then leased that quota to grow tobacco to farmers who actually get out and farm tobacco, which is a tough, backbreaking business.

Now, getting to my point. What do you think would be a reasonable compensation for us to give to the holders of these quotas to, in essence, end the program? Let me remind my colleagues that unless the bill has been changed and it has been rewritten—and I am eager to hear what the new provisions are—but unless they have been changed, we are not talking about taking the land when we pay people. We are not talking about barring them from growing tobacco. We are simply compensating them for an effect that we believe this bill will have on demand. And while we throw around numbers, the plain truth is, nobody knows what effect the bill will have on the demand for tobacco.

We are in the midst of a program where we are phasing out Government price supports in the broad base of American agriculture through a bill referred to as Freedom to Farm. Under this bill, we set up a 7-year program where we provide transition payments to farmers so that at the end of the 7 years they have the freedom to farm, the freedom to succeed, and the freedom to fail. Let me say, it is one of the most enlightened policies we have instituted.

Here is my point: We have evidence for seven crops as to how much we have paid people who grow those crops in return for phasing out the Government program. Let me just run through some of these costs. For wheat growers, we are paying them $125 an acre. That is to phase out the wheat program. We pay it over 7 years, $125 an acre. For corn, we pay $200 an acre, paid out over 7 years. For grain sorghum, we pay $131 an acre. For barley, we pay $70 an acre. For oats, we are paying $8.38 an acre. For upland cotton, we are paying $245.99 an acre. For rice, we are paying $714.09 an acre.

Now, how much do you think we are paying per acre in the least costly tobacco bill which has been proposed? Let me give you a hint. It is about $18,000 an acre. Let me repeat that number. If we paid tobacco quota owners—not tobacco farmers; we are paying the people that own the Government license; relatively little of the money is going to the farmer—if we paid them the total of the amount per acre that we paid all of the other seven crops combined—in other words, we paid them every penny we pay corn, wheat, grain sorghum, barley, oats, upland cotton, and rice combined—we would pay them $1,495.78 per acre. If we paid them the combined amount for all 7 crops, it would be that amount, but yet we are paying almost 18 times the amount we paid every other crop combined to buy out tobacco producers.

And the final incredible paradox is that we have a market for tobacco quotas. In other words, I could go out this afternoon—I do not know if I could do it this afternoon because this bill is on the floor and I guess people think it might pass. But last week, I could have bought a quota to grow tobacco for $3,784. I could have bought a quota to grow tobacco for $3,784. That was the average cost of a quota, at least the only number I could find last week. If people have other numbers, I would be happy to be educated.

But we are getting ready to pay somebody who went out on Friday and bought that quota five times what they paid for the quota, and then we are still going to let them grow tobacco, and we are still going to let them own the land.

I am not here today to criticize the tobacco program. I am here to raise the question, Is this bill about smoking or is it about money?

When we are paying lawyers $100,000 an hour and when we are paying tobacco growers, or at least the people who own the right to grow tobacco under a Federal licensing program, 18 times what we paid all 7 major crops combined to phase out their program, does it not suggest that this bill is about money, and not only the use of money, the vulgar use of money? How can we justify these kind of numbers?

Let me make it clear. I have many colleagues from tobacco-producing States. I don't have tobacco in my State. It is easy to pile on some State when you don't have the product grown in your State. I experienced that with sheep and goat raisers. I am willing to support a buy out of tobacco growers and the people who hold quotas. But I cannot justify the kind of figures we

are talking about—18 times the combined buy out of all 7 other basic agricultural products when added together.

What does all of this suggest? It suggests that this bill is not only about money and quantities of money, the likes of which we have seldom seen here, but it is also about the perilous use of this money where we are taking money and collecting taxes and we are distributing it to various interest groups and the lack of care with which we are distributing it is clearly indicted by the amounts of money that we are giving people.

We are going to get a chance to vote on both of these issues. I do not want to enter into a debate about them here. I will debate both of them when we get to them.

But the point I want to make is this: This is evidence that this bill is about money and not about teenage smoking. It is clear evidence, it seems to me, that in distributing this money the totals are so big that there has not been great care taken with the distribution. Please recognize that if working people got to keep the money, they would spend it wisely. Even if it were in the appropriations process in Congress, much of it might be thrown away but some of it might be used for some good or objective effort.

I simply say this bill stands indicted in how careless we have spent hundreds of billions of dollars in dividing up this windfall, this winning of the lottery, by the designation of this industry as the enemy of the people and thereby creating a right and a public demand that we seize this money.

The next issue I want to talk about is the tax itself. On this issue, I think we have one of the greatest gulfs between the rhetoric of the bill and the reality of the bill that exists. The rhetoric of the bill is that we are taxing these tobacco companies. The rhetoric of the bill is these tobacco companies have conspired to deceive; these tobacco companies have conspired to induce children to smoke. I don't dispute that. I think it is true. I think there is increasing evidence that is true. But the rhetoric is that somehow we are penalizing the tobacco companies and the tobacco industry with this massive bone-crushing tax of hundreds of billions of dollars. That is the rhetoric.

But what is the cold, hard reality? The cold, hard reality is that virtually none of these taxes are being paid for by tobacco companies, and, in fact, we have an incredible provision in the committee bill to make it a crime if the tobacco company absorbs any of the tax and does not pass it through to the consumer. So not only does the tobacco company not pay these hundreds of billions of dollars of taxes, but we have in this bill a provision—almost unimaginable—that makes it a crime for the companies not to force the consumer to pay the tax. So not only do we not tax the tobacco companies but we protect them in case any of them would say, ''Well, look, I do not want to pass the whole thing through but I would like more of the market.''

Who pays this tax? I would like to suggest that my colleagues ought to go out in Washington, DC, and walk the streets and try to take a look at who is smoking. What they are going to find when they do that is that basically smoking in America, while there are exceptions to every rule, smoking today is basically a blue-collar phenomenon. When you look at the distribution of the tax burden, you see it as clearly as anything that is visible. The tax that this bill imposes, hundreds of billions of dollars of taxes, will be borne overwhelmingly by blue-collar workers.

According to the Joint Tax Committee, 74 percent of the taxes that will be collected under this bill will be paid for by Americans who are in families who have incomes of less than $50,000 a year.

So the rhetoric is we are taxing these big, evil, conspiring tobacco companies. But the cold reality is that not only are we not taxing these tobacco companies, but we have provisions in the bill that protect the tobacco companies from anyone not passing the tax through to the consumer.

So every penny, for all practical purposes, of hundreds of billions of dollars we are going to collect is coming from real honest to goodness people who are buying tobacco products, the very victims of the conspiracy that this bill is said to rectify. The very victims of the conspiracy that this bill is aimed at rectifying are the people who will pay these taxes. And 74 percent of them are members of families who earn less than $50,000 a year.

I don't have any intention, with all due respect, of hurrying up my statement. I intend to cover each of these issues, and I am not going to delay them. I am certainly not filibustering.

Mr. MCCAIN. Will the Senator from Texas yield for a comment?

Mr. GRAMM. I would be happy to yield without losing my right to the floor.

Mr. MCCAIN. The Senator from Texas was not on the floor but we did have an understanding that we would move forward with an amendment. I ask the Senator not to deprive us of any information or knowledge that we need from him. But we did have an understanding before the Senator came to the floor. I could have blocked the Senator from taking the floor. But I didn't choose to.

So I would appreciate it, if at least at some point we could move forward. I thank my dear friend from Texas.

Mr. GRAMM. Let me say, I understand the Senator from Arizona wanting to move the bill forward. There are some key points that need, I believe, to be made before we start voting on amendments. I am not going to be in any way dilatory. I have several other issues I want to cover. But I will move with all due speed in covering them.

But I do want to say that we have a bill that has come to the floor without objection. We are debating it and I want to make it clear that we are going to debate this bill. We are going to have a full airing of views. It is imperative that we all understand what is in the bill. I intend to object to the unanimous consent requests that would limit my right or the right of other Senators. This is the Senate.

I remind my colleagues that when Jefferson came back from France where he had been Minister to France when the Constitution was written and he asked Washington what the Senate was for—and many of you know the story—Washington, being a southerner, often cooled his tea in a saucer before he drank it. Jefferson asked him what the Senate was for. If you had the House, what did you need the Senate for? And Washington explained to Jefferson that in moments of heated public passion, the heat of public opinion would overwhelm the House but the Senate would be like this saucer, as he poured his tea into his saucer to cool, and it will cool passions before it acts.

So I do not intend to delay, but I do not intend to be hurried either, nor do I intend to have my rights limited even by my dearest of all friends, Senator MCCAIN.

Now, 74 percent of the taxes that are collected under this bill are collected from Americans who are in families that have incomes of less than $50,000 a year. Far from taxing the evil tobacco companies, the cold reality is, as much as we would like it to be otherwise, as much as we would like to convince ourselves and others that it is otherwise, this is a massive, regressive, crushing tax on blue-collar America.

Let me give you a figure which is astounding to me, and if it weren't from the Joint Tax Committee I would question its validity. But listen to this number. Of Americans who make $10,000 a year or less—very-low-income Americans—if we pass this bill, we will raise the percentage of their income coming to the Federal Government by 41.2 percent.

Let me give you that number again. For people in America who earn $10,000 or less, so substantial is the impact of this cigarette tax on the amount of their income coming to the Federal Government that the percentage of their income going in Federal taxes will increase by 41.2 percent from this cigarette tax increase alone.

Who is paying this tax? Americans who make less than $10,000 a year are seeing their Federal taxes rise by 40 percent as a result of this bill. Those who make between $10,000 and $20,000 will see their Federal taxes rise by 9.8 percent. Those who make between $20,000 and $30,000 will see their Federal taxes rise by 4.4 percent. Needless to say, by the time you get down to us, Members of the Senate, we see our Federal taxes—relatively few of us smoke, but on average people who make more than $100,000 will see their Federal taxes rise by only .1 percent.

So I think we are going to have to come to grips with one clear fact about

taxes: We are not taxing tobacco companies. We are not taxing evildoers. We are not taxing conspirers. We are taxing victims.

I hate pulling my mama into the debate, but it is such a beautiful example, I can't resist. My mother is 85 years old. She smokes Marlboros. I have spent my 55 years of life trying to get her to quit smoking, and I have failed. And now the doctors tell me that one part of her that is still in relatively good shape is her lungs. So I have quit trying to get my mother to stop smoking. I still believe it would be good for her not to smoke, but I can't get her to stop.

But here is the point. The whole logic of this bill is saying to Florence Gramm, ''Florence, you have been exploited. Joe Camel has made you smoke for 65 years. The tobacco companies, through their advertising, have forced you to smoke. And in doing so, they have affected your health. They have perpetrated a terrible evil, and we are going to do something about it.''

So Florence asks, ''Well, what are you going to do about it?'' Well, what are we going to do about it? We are going to make my 85-year-old mother pay higher taxes. So we tell her she is exploited. We are outraged about it. The President is outraged about it. We are outraged about it. So what do we do to her to show her how outraged we are? We raise her taxes.

Now, please forgive me if I seem to be struck by the incredible paradox that under this bill the victim is penalized and the perpetrator of the fraud is not only not penalized, not taxed, but protected by an incredible provision that forces those who might not pass through all of the tax to my mother to do so.

One final point before I leave taxes in my effort to get on and finish my opening comment goes back to this evidence. What is the evidence that this is about getting people to quit smoking, and what is the evidence that this is about money? Well, let me give you a clear-cut piece of evidence. If the objective of the bill was to get people to quit smoking, you would put the tax on full tilt on day 1. When an amendment was offered in the Finance Committee to raise the tax to $1.50 a pack, the proponent of the amendment offered it phased in over a 10-year period so as to prevent a consumer backlash.

What is a consumer backlash? Why would you phase a tax in if the objective is to get people to respond to the tax? Well, we all know. Many of us have served on the Finance Committee. All of us have been involved in debates that entailed tax increases. The reason you phase a tax in is to try to hide it from the taxpayer and to try to reduce the backlash to it or the economic or political response to it, and the way you do it is, you start it out small and then each year you make it bigger, hoping nobody notices. But isn't it an incredible paradox that a tax which is supposed to be a tax to shock people into stopping smoking is phased in so as to minimize the ''consumer backlash'' to it? If the purpose of the tax was to get people to stop smoking, you would hit people with a tax at its highest level on day 1. Consumer backlash would be what you want. But if the purpose was to raise money, then you would phase in the tax.

I submit that the proposal before us, the amendment to raise the tax to $1.50, and every proposal save the one in Finance where I raised this point, each of these proposals phases in the tax, and you would never phase in the tax if the purpose of the tax was to get people to respond to it and stop smoking. You would phase in the tax only if you wanted to minimize their response to it and their awareness of it. I think that is additional evidence that the objective of this bill, or at least the likely result of it, is to raise hundreds of billions of dollars and spend the money. The bill is not structured in a way one would believe it would be if its sole objective was to get people to quit smoking.

I have three final issues I want to talk about. The first issue is one that weighs heavily on my mind. Maybe I am the only Member of the Senate who is concerned about this, but it is an issue that I am greatly concerned about. We are setting a precedent for America's future with this bill. There are many elements of the bill that I am sympathetic to, but there is one element I am very frightened about. Here is that element. It is stated in a clear form—maybe overstated, but I don't think so. What has happened in this bill is we have picked, in this case an industry, and it has been so vilified that it is popular to tax the product it produces, even though the tax is on blue collar workers and not the tobacco companies. And the logic of this is, because of the negative impact on people's health of consuming this product, that tobacco, nicotine, is addictive, and the people who sell the product know that and market it in such a way as to get people to consume the product. So as a result, we are getting ready to impose one of history's larger tax increases on the consumers of this product.

This is a view which basically says my mother is not to blame for having smoked for 65 years, it is not her fault; she was induced to smoke by an industry which conspired to attract her as a customer, and to hold her as a customer. Now, if we take that view in this bill, there is no way you can look at this bill without reaching the conclusion that we have decided my mother and the millions of other people who smoke are victims and they have, against their will, made a decision—if we divorce them from responsibility for their own decisions, where does this end? Does anybody here who has ever known an alcoholic not believe that spirits, whiskey, alcohol is addictive? Is there anyone listening to this debate anywhere, who has ever known someone who was an alcoholic, who doesn't believe you can get addicted to whiskey?

Next month, are we going to have this same—or next year—are we going to have the same process with regard to hard whiskey and beer and wine? Are we going to discover somewhere in the deep files of the liquor companies 10 years from now that they targeted their ads to today's 15 year olds?

Are we going to discover that the beer brewers have figured out what ads to run to get us to go to the refrigerator and get a cool one? And are we going to start this process next year on alcohol? I don't see how it can be otherwise. Does it end there?

When I go to McDonald's, attracted, as our President is attracted, against my will—I would like to be as thin as the Senator from South Carolina. But McDonald's and every other fast food producer in America conspire against me. They fill up the television with ads that attract me to go and to eat. They do studies to try to determine my weakness. Am I not victimized by McDonald's and Burger King? And, if I am victimized, are they not liable? If I am not responsible, are they not responsible?

Here is my point. I hope my colleagues will not take it as a trivial point because I don't mean it as a trivial point. Where does this end? If we don't hold people accountable for decisions they make, does it end with tobacco? Does it end with alcohol? Does it end with fattening foods? Where does this debate end?

Let me submit the plain truth is everybody who has thought for a millisecond about this issue has thought about this and nobody knows the answer to it. And I submit this is a profound question we need to pray over for an extended period of time before we set a precedent which says people are not responsible for the decisions they make and, therefore, somebody else is responsible, and they can be made liable.

Two final points: Nobody is looking at black markets. We have a bunch of people who are talking as if they are economists and they know what they are talking about. You know, we have all seen—many have repeated the study—if you raise the price of tobacco by 10 percent, you are going to have a 6-percent decline in consumption. If you think about that, everybody knows that is nonsense. So you could, by doubling the price of cigarettes, eliminate smoking in America? Does anybody really believe that? But yet ads run every day with that figure in it. People repeat it. Somebody made it up. It makes no sense whatsoever.

Europe has imposed very, very high taxes on tobacco. Has it stopped teenage smoking? No. Has it stopped adult smoking? No. Will raising the price of cigarettes—other things being the same—have some marginal impact on tobacco use? Yes. But can we say for

every 10 percent we raise prices, consumption will decline by 6 percent? Absolutely not. Any good freshman student in economics would laugh at such an assertion.

But even more laughable is the arrogance of government. Let me just give you some facts. Great Britain has imposed a very high price on tobacco. But have they been able to enforce the tax? The answer is no. Fifty percent of the British market for cigarettes today, according to an article by Bruce Bartlett in the Wall Street Journal, and a fairly comprehensive study he has done at the National Center for Policy Analysis and the De Tocqueville Institute—what he has found is that countries that have imposed high tobacco taxes have seen an explosion in black market sales of cigarettes and, as a result, the cigarettes sell at substantially below the price with the tax, and in some cases they sell at less than they sold for before the new tax.

When Britain has 50 percent of its cigarettes that are bought on the black market and smuggled into the country, or are produced illegally there, when Italy has 20 percent, when Spain has 23 percent, when even States in our country at the low level we now tax relative to the levels we are talking about here have experienced that, when there is more money in smuggling cigarettes in Great Britain than in smuggling 20 pounds of marijuana—should not we at least look and make some objective judgment as to whether or not we are taking an action which will fill our country up with illegal cigarettes, and so we will have some hood on the corner who is saying to our children: Look, I can sell you these cigarettes, these brands at this price; I can sell you marijuana for this price; a little crack cocaine for this price. But you know the response you get when you raise this issue? The response is that people who wouldn't know economics from ethnic studies say: There is nothing to this.

There is everything to this. It is a cold reality that in Europe black markets in cigarettes are now a way of life. I think in setting out a policy that is aimed at, at least nominally, getting our children not to smoke, we need some hard evidence about black markets. If we have black markets in Canada, if we have black markets all over Europe, if we have black markets in Asia, what is the reason to believe that we are not going to have black markets in the United States of America? I believe this is an issue which needs to be dealt with.

A final point and I will be through with my opening statement. I am loathe to do this because I know when I do it my telephones are going to ring off the wall, so people who work for me please forgive me. But you get the idea in reading the newspaper in Washington, DC and in working in the Senate that this issue is the all-consuming issue in America; that this is an issue the whole world, at least our part of it, our constituencies, are focused on and nothing else. One of the things I try to do is to find out what exists within the beltway and what exists in America, and try to determine what the public really thinks and what is it they want us to do.

So last month I got my office to keep pretty meticulous records about the amount of information we were getting in our office about this bill and the tobacco issue. And, as of that period, ads had been run in the Dallas Morning News and the Houston Chronicle—those are the two biggest papers in my State. Some television ads, I believe, had been run. So the question was, over a 30-day period, how many of the 19 million people in my State thought this was a big enough issue to pick up the telephone and call my office?

Let me give you the results. We had about 1,400 people call our Washington office and say, ''Don't raise taxes on cigarettes.'' Every one of them was generated, as best we could tell—everyone called in on a WATTS number and they had been triggered to do so.

Three hundred people called in and said, ''Raise taxes on cigarettes; save our children.'' But as best we can determine, almost every one of them was triggered with the use of a WATS line and by an organized group.

Here is the most revealing and important thing. Last month, in my seven offices in the State, so far as I am aware, virtually no one called on this issue. It is the No. 1 issue in Washington, DC. Ads are being run here, there, and everywhere. And in 30 days, virtually nobody who actually had to pick up their phone and call, as they normally would call an office—not triggered by a special interest group—called my office on this issue.

Why is that relevant? Why it is relevant is, I think the Senate, as the greatest deliberative body in the world, needs to take a step back and not stop considering the bill—far from it. But we need to not let the special interests that are opposed to the bill or the special interests that are for the bill dominate our thinking on this bill.

We need a broader perspective, and the plain truth is, this is not the be all and end all of America. My view is, we need to be sure we know what we are doing, and we need to do the right thing, because the truth is, obviously we have all been told—every time I raise this issue in one of our closed meetings, people say, ''Yeah, but they haven't run the TV commercial yet attacking you,'' or whomever. Let's not underestimate the American people. My urging here is that we take a long, hard look at this thing and we try to figure out what the right thing is and that we do it.

This is a very important issue. There is a lot of money involved here. A lot of hard-working, blue-collar people are going to suffer, as a result of this tax, a lower standard of living. A lot of people are going to get huge quantities of money.

Let me say that I don't have any doubt that the 1,400 people who called me against this bill on the WATS line were triggered by the tobacco companies, but I also don't have any doubt that almost all of the 300 people who called me for it were triggered by the groups that hope to get billions of dollars from this bill.

As I see this thing, the only two clearly defined constituencies here are people who have a direct interest in the bill. I think we ought to listen to them to see if they have anything to say, but I don't believe we should be frightened of them. I believe we should try to ferret out what are the facts. I think we need to look at each and every one of these issues: Who is paying the taxes? Who is hurt? Who is helped? How is the money being spent? Is the money being spent wisely? Are we going to affect teenage smoking? Is this the best way to do it? Is there a better way to do it? Do we do it without reallocating hundreds of billions of dollars from blue-collar workers to basically bureaucrats and public interest advocates who—I don't know how they determine what the public interest is to advocate it, and I am always suspicious of anybody who advocates the public interest, other than myself.

These are the things that I urge my colleagues to look at. Let's not delay, but let's take the time to know what we are doing. Let's give some prayerful thought about where we are going to be next year if the same thing is happening to alcohol. Where are we going to be the next year if the same thing is happening to the fast food industry? Where does all this end once you start it? I don't know the answer to this, but I think we ought to know the answer before we start down this road.

Let me conclude by simply repeating the remark I made earlier, and that is, I congratulate Senator MCCAIN for his work in the Commerce Committee. Having had a little opportunity to try to have a positive impact in the Finance Committee, I have a greater appreciation of the difficulty he faced. I think it is clear the Finance Committee made the bill worse in every respect than if they had never touched it. The question is, Given that we now have the bill on the floor, what can we do to make it better?

I hope at the end of the process that I might be on the same side as the Senator from Arizona. I think the better we understand the bill, the better the chances are that we will serve the public interest and that that will happen.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Arizona.

Mr. MCCAIN. Mr. President, very briefly, I thank the Senator from Texas, as always, for his thoughtful and insightful views. Obviously, I am not in agreement on a number of the things he said, but his and my disagreements have always been very

agreeable. I believe he has contributed an enormous amount. I do agree with him, I don't know what would have happened if we had given the Finance Committee another 24 hours, which I think is, as he mentioned, a cautionary lesson as to what we have had to go through and what we will go through on the floor and what might have happened if it had gone to other committees.

Just one other point I want to make for my friend from Texas. Yes, the attacks have started. Millions of dollars have been directed at me, so I do know what it is like. You say you don't know what it is like. I know what it is like. I am a big boy, and I can take it, but I have been rather interested at the ferocity of these attacks and how personal they have been. Obviously, I will not respond in kind. I would have liked to have seen the tobacco companies spend some of this money on trying to stop kids from smoking and other worthwhile efforts. But it is their right as corporate citizens to do so.

I mention to my colleagues, Senator HOLLINGS has remarks that he would like to make, and it is my understanding, after that, I say to Senator FAIRCLOTH, that we will propound a unanimous consent request which will make his amendment in order, with a motion to table at a time certain after that. That will be at the completion of Senator HOLLINGS' remarks, so we can move forward with the amending process.

I thank Senator FAIRCLOTH for his patience and good humor throughout this delay this morning. I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, the distinguished Senator from Texas reminds me of that youngster who went to the psychiatrist. The psychiatrist drew some circles on the blackboard and said, ''Now what do you think of?''

He said, ''Sex.''

He drew lines up and down. The youngster said, ''Sex.''

He drew some crosses. He said, ''Sex.''

The psychiatrist said, ''Young man, you're the most oversexed person.''

The youngster said, ''Doc, you're the one drawing the dirty pictures.''

The Senator from Texas is the one drawing the dirty pictures. I have never heard so many extreme nonsensicals in my life. We want to keep his dear mother here. No one is victimizing her. What we are going to try to do is help the doctors to counsel her to stop smoking.

Let's get back to last June, almost a year ago, to show you how far out of kilter this thing has gotten.

What happened was, to the surprise of many—I did not know, and I do not know of any Congressman or Senator who participated. I do not think there was a Congressman at the table. I do not think there was a Senator at the table. But the tobacco companies, together with the States attorneys general and the White House and the health community, announced a dramatic settlement of $368 billion. That is without a Congressman or Senator even thinking in these terms.

I have been up here 30 years. And I have worked with the Cancer Institute, Dr. Koop and Dr. Kessler and others. Thirty-some years ago, yes, we put notification on a pack of cigarettes. And we have admonished—I have seen demonstrations by the Cancer Institute that stopped me from smoking. But we have not done near what was announced last June.

Last June, the communities got together on the basis of the companies stating, in essence, ''Look, we're tired of winning these cases.'' As we speak on the floor of the Congress today, no one has won a jury verdict against a tobacco company, period. I think it is in the main, on account of the publicity and the health and the notification of the assumption of risk, that smoking is dangerous to your health. The companies themselves are engaged in advertising Miller High Life Beer, Kraft Foods; different other things of that kind, Ritz Crackers, what have you.

They are good businessmen. They are not a bunch of crooks, as they are trying to be depicted here once the politicians got this particular issue. They have run a touchdown in all the directions and in all extremes. But what happened was the companies said, ''Look, rather than paying out all these costs to lawyers and winning every case after case, why don't we get together and continue in an orderly fashion.''

We are not going to have prohibition. Even I heard Dr. Koop testify to that before our committee that no, he was not attesting to having prohibition. We are not going to have prohibition of tobacco. Tobacco was here. The Indians were smoking it when we arrived.

Just the other day we had a celebration with our role model, the former distinguished majority leader, Mike Mansfield, whom when you go to the Mansfield Room, he is very proud of that portrait of himself smoking that pipe. And he is 95 years of age.

So we live in the world of reality. Hopefully, this Congress will get back to reality and not the nonsense that we have just heard of about taxes and what the idea was and everything else of that kind.

The idea was to get an arrangement whereby the companies who could win every advertising case about Joe Camel and everything else of that kind says, ''We'll stop advertising in this manner. We'll stop spending that money on advertising. We'll stop spending this money on lawyers. And we'll make an agreement with you to pay in so much of our profits. Necessarily, you say that you want to raise the price because that is the best control of tobacco consumption, so we'll go along with raising the price.''

We live in the real world. I think it is $4 or $5 or something in downtown London. I was visiting with a friend not long ago from Canada. He picked out of his pocket and lit up a cigarette. And I said, ''How much, by the way, was that pack?'' He said, ''This one is $7, but in Canada it is $6 to $10.'' You see, that shocks us who really have not paid that close attention.

I never heard of any $360 billion, and I have been working on the defense budget for years on end. That is only $245 billion. Here we come with an amount that they agreed to pay themselves with an increase in the cost. The politicians coming around hollering, tax, tax, tax—tax and spend, tax and spend, and everything else, including the companies. Under the whole cloth, the tobacco companies are the ones who thought of the idea of taxing $368 billion. And this just carries it up to $500 billion.

So they are the ones who gave us the idea that let us go ahead and see how much, if you please, Mr. President, you could charge on cigarettes, as much as possible, to try to stop the smoking, pay for the advertising, pay the States back for their Medicaid costs, start some children's programs. Yes, they talk about it—tax and spend. The spending is on children, on helping to get children to stop smoking. The distinguished Senator from Texas knows that. We are doing that, and we are going to use that money to try to stop children from smoking.

And, you know, Mr. President, they went even further than I would have gone if I had been their lawyer or I had been the CEO, and that is take some kind of pledge and penalty for what they call ''look back.'' It took me a long time—they said, ''We're going to be responsible for stopping smoking in America.''

Now, whoever heard of that? We have been trying to do it with notification on the packages. The health community has been trying it. Every doctor now will counsel you. So there is nothing new. But the tobacco companies are supposed to advertise in an adverse fashion and pay a penalty that goes up, up and away if, as a company, they do not comply or accomplish it.

Now, that was a pretty solid agreement that has been distorted in every fashion here which does not seem to get any understanding because the jackals have taken over now, cackling up here about tax and spend and everything else of that kind, going into $18,000 an acre, $100,000-an-hour lawyers' fees, and all these other things.

Mr. President, my distinguished colleague from North Carolina has an amendment that he wants to put in—and I want to yield to him just as promptly as I can—relative to legal fees. And we will debate that and the contribution made by trial lawyers.

Let me just state ahead of time, categorically—and I am looking over here at a chart that says ''Minimal Ethics.'' Not at all, absolutely not at all. I have

to say something about that chart. I cannot resist the temptation. I have been at the trial bar, and if they think it is anything unethical, we could go to the company lawyers who are now being investigated for conspiring with the company executives on how to avoid these charges and everything else of that kind.

Man, oh, man, talk about being unethical, after the abuse and the challenge they have been through. There is a little attorney general down there in Mississippi. I was just watching it the other night. I was not that familiar with him—Mike Moore. He literally was sued by his own Governor trying to bring tobacco to the bar of justice. But he stuck to his guns. Maybe they call that unethical bringing that case against the industry, or a contingent fee is unethical. But it goes for the ''every mother's son'' the best of counsel. And corporate America and the Chamber of Commerce does not like that.

Billable hours, good Lord have mercy, we are going to get into a good debate on billable hours. And there are 60,000 of them registered to practice in the District of Columbia, 60,000—oh, they got all lawyers in Japan right here in the District—59,000 will never see a courtroom or know anything about law. It's fixing me and fixing this one and that one. It's fixing the jury. Unethical? Unethical? I want to hear what is unethical about trial lawyers compared to the billable hour crowd.

But back to the Senator from Texas, and he was talking about the amount of money, the billions here, to buy out the farmers. At least we are paying the farmers who have been making a good living to get out of that, not for those who didn't make a living, went broke, and we came and gave them food stamps to the tune of 431 billion bucks, Resolution Trust Company. Half of it was in the State of Texas. We bought every swimming pool, every tennis court, every golf course, every country club that you could possibly imagine. It was improperly financed. You and I know it. Over $200 billion to one State. But they want to talk about honest, hard-working tobacco farmers out there at the sweat of their brow being bought out of this particular business, coming up here with all these fanciful figures; $18,000 an acre—that takes care of the warehouse, that takes care of the bank on the loan, that takes care of the equipment, that takes care of the community, that takes care of his children.

When he is out of the business, how do you send them to college? So you let them come in on Pell grants. Yes, it is a comprehensive approach. The LEAF Act is intended, because we saw last fall that the chairman of the Agriculture Committee wanted to just put them out of business, and not take care of the communities.

I have I don't know how many farmers in South Carolina, I think about 2,000 tobacco farms, over $200 million, a big cash crop. So when we saw that, we moved. I want to say this categorically and just dispassionately, how shocked and dismayed I am to get into this particular situation. The record ought to reflect it. When we saw the chairman of the Agriculture Committee who said he had seen polls and everybody in tobacco farming wanted to get out of it, which is out of the whole cloth. I have been traveling to tobacco farmers, campaigning, crisscrossing all over the State. I never saw the tobacco farmers trying to get out of the business, but that is what he said.

I said we are really in trouble. The distinguished Senator from Kentucky, Senator FORD, and I, we have the LEAF Act and, yes, we positioned it. We knew what we were doing because the distinguished chairman of the Commerce Committee came to me and said, ''Evidently, they are going to have a tough time getting a bill out of any committee, and the majority leader asked if we can get one out of our committee. I would like to have it bipartisan,'' the chairman said. I said, ''I would like to have it bipartisan, too, but we have to take care of the farmers.''

He hesitated a few days and came back and said, ''All right, we will take care of the farmers.'' And we went all the way down to Florence and said the LEAF Act was taken care of, taking care of the farmers. The President of the United States went out to Kentucky and said the LEAF Act is taking care of farmers. We had five conferences trying to get this bill finalized with the White House, with the Republican majority and with the Democratic minority to work out what we could, to get a comprehensive policy and get it over to the House side. Each time we checked, the LEAF Act was there, undisturbed.

Now, last night, out of the clear blue—which is one of the reasons I wanted the floor—we get Senator LUGAR's bill which had one hearing last fall, I think last September, according to the record, never a markup, and get this whining out here about equal treatment. Why we have to give him—the Agriculture Committee likes the bill, had been marked up and reported, like ours had been worked upon. No, we have been hedging against that nonsense of the Lugar approach since last fall and working around the clock, locking down everything, and they come and tell us that they couldn't avoid it. They had to get a majority of the Commerce Committee members. I am dismayed the chairman voted with that majority. After all our work trying to work together. That explains my statement yesterday about the bipartisanship.

Now, back to just exactly what we have here with respect to being victimized and everything else of that kind. I think that agreement, having been worked out within the Commerce Committee and all of these conferences and everything else, was a pretty judicious instrument in that you cannot have tobacco farmers, Senator, unless there are tobacco companies. You can put the companies out of business. We have a mob scene here, a lynch mob coming forward; get rid of the company.

Every time we agreed on something, Senator MCCAIN and I heard from different groups, ''more, more, more, they are liars,'' they are this, they are that. Let's agree on all of that, you can put them out of business. Then MCCAIN and HOLLINGS can start their own tobacco company or maybe it would be SESSIONS and HOLLINGS. It would be a pretty good business. All we have to do is get the tobacco from Turkey. We don't have any false records they can go and embarrass us with—juries and everything else of that kind. We can go back and get old Joe Camel and start advertising again. Ain't nothing wrong with that. They tried end on end before the courts to kick out their advertising, constitutional right, first amendment, and we can go make a living, and what has happened? Nothing for the children.

So that is a pretty good political charade to come out on the floor of the Senate and say, now, is it tax or is it for the children, and analyze it in this tricky mind as being just a tax. It is an increase in price. You don't have to pay it. It is voluntary. I quit smoking. They say more than half of the people could quit smoking. Yes, it is addictive to some, just like alcohol. We could say get rid of Ronald McDonald, advertising fat for the children. Go after that. With that, I can agree with the Senator from Texas.

When you come right down to it, it is a balancing act that we are engaged in, and nobody wants to acknowledge it. We can get rid of the tobacco companies, but that does nothing for us at all. It doesn't do anything for the health community. It doesn't do anything for the children. It doesn't do anything for the payments to be made. This is money going back to the States. It doesn't do anything for the programs. It doesn't do anything for the look back. It doesn't do anything to anything.

So these people that run around and want $1.50 and more and more and more, don't even understand the problem, don't even understand what we are trying to do on the floor of the Senate with the tobacco bill.

We are trying to go along with respectable companies—yes, they did stand up and falsely state that they didn't think it was addicting and everything, but those folks are gone. If you don't think they have exactly, just tell the truth. Go over to the Defense Department and get their civil and criminal docket and you will find true blue chip corporations of America trying to defraud the government at every turn. It is a sad thing.

Then I have to look up here at minimal ethics in the business crowd. I talked to my friend, Tom Donohue, yesterday and I worked with him. I

have every chamber of commerce award that you could possibly get.

But to get up here and let this legalistic crowd take over and start controlling—here is the Republican movement that doesn't want to have price controls, wants to deregulate, wants to get rid of the Government, and now wants to fix prices, wants to fix fees. How can you tell when these lawyers have really made the case? It isn't an hourly thing. Until last June, there wasn't any case. Nobody has made any—they have gotten some settlements. I know the best of the best from my hometown tried one for ancillary smoke—what do you call it? Voluntary smoke? Involuntary smoke? Whatever it is—up in Indiana during the months of February and March, and even he lost that.

We are saying that you are not going to have any more immunity, or have a limit on the immunity. They can still bring individuals. They can still bring class actions. Everything is still in the commerce bill.

I would like to have given what they promised last June—the immunity. But we did put an $8 billion cap on it. But the reason for giving any immunity is that the juries of America have given them immunity, period. They know the assumption of risk and everything else of that kind. It has been out there 30 some years. By the time we get along with some petitions before the court and everything, it will be 40 to 50 years, and everybody will have known about it; you won't be able to get a verdict against the companies.

So we who are responsible for public policy are also at a crossroads. There is a pool of opportunity draining out on us. We ought to be acting this year. We ought to be acting this week. We ought to get with this thing on a realistic basis and how we brought this bill out, and not engage in trickery and come back in and take a bill that never was reported out of the committee, never onto the floor, never in debate, and say, ''Stick it in, because we can fix the majority on the Commerce Committee.'' I am saddened to see that. I never have seen that happen before. I checked with the Parliamentarian. They said yes, it could happen. But I never have seen that and it was sad to see.

I have a lot of other things here that we could touch upon, but the distinguished Senator from North Carolina has been waiting. I hope when he does present his amendment, that he amends the words ''minimal ethics.'' I don't know that any trial lawyer—they win some cases, but they lose a lot of cases.

As between the billable hour crowd and those working for the client rather than for themselves, because the clock keeps running, that is the most vicious thing that ever happened to my profession—this billable hour group. That is the worst thing I have ever seen occur, because I practiced law—never with billable hours; I got results for that client. Then he understood that was the charge, because we won. When we lost, we assumed all the costs. Everybody knows just that. What has been unethical, according to the testimony made to that attorney general down there, is the companies have been unethically engaged and the Chamber of Commerce has been supporting them.

I hope the Senator from North Carolina will amend the words there on ''minimal ethics.''

I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask at this time unanimous consent that Senator FAIRCLOTH be recognized to offer an amendment.

Mr. President, we still have one Member on our side who needs to be contacted.

I seek at this time that Senator FAIRCLOTH be recognized to offer an amendment, and that we proceed under the understanding that no second-degree amendment be in order to the amendment until the motion to table is made at 4 p.m.; that, if the amendment is not tabled, the Senator from South Carolina, Senator HOLLINGS, be recognized to offer a relevant second-degree amendment; and the time between now and 4 be equally divided.

Mr. President, this body proceeds on comity. I would like to proceed under that understanding, and as soon as we contact one Member, then we will put this into a formal unanimous consent agreement.

At the moment, I would like to ask for my colleagues' indulgence so that Senator FAIRCLOTH can be recognized to offer his amendment.

Mr. HOLLINGS. If the distinguished leader will yield, I understand we are coming back at 2:15. I was trying to get an hour on our side.

Mr. MCCAIN. We will proceed under that understanding, and we will attempt to put it into a unanimous consent agreement between now and the next 5 or 10 minutes, and, if not, to try to have it between now and by 2:15 when we return.

I yield the floor.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FAIRCLOTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2421 TO MODIFIED COMMITTEE AMENDMENT

(Purpose: To limit attorneys' fees)

Mr. FAIRCLOTH. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. FAIRCLOTH), for himself, Mr. SESSIONS, and Mr. MCCONNELL, proposes an amendment numbered 2421 to the modified committee amendment.

Mr. FAIRCLOTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

Sec. . Limit on Attorney's Fees.

(a) FEE ARRANGEMENTS.—Subsection (f) shall apply to attorneys' fees provided for or in connection with an action of the type described in such subsection under any—

(1) court order;

(2) settlement agreement;

(3) contingency fee arrangement;

(4) arbitration procedure;

(5) alternative dispute resolution procedure (including mediation);

(6) retainer agreements; or

(7) other arrangement providing for the payment of attorneys' fees.

(b) REQUIREMENTS.—No award of attorneys' fees under any action to which this Act applies shall be made under this Act until the attorneys involved have—

(1) provided to the Congress a detailed time accounting with respect to the work performed in relation to the legal action involved; and

(2) made public disclosure of the time accounting under paragraph (1) and any fee arrangements entered into, or fee arrangements made, with respect to the legal action involved.

(c) APPLICATION.—This section shall apply to fees paid or to be paid to attorneys under any arrangement described in subsection (a)—

(1) who acted on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(2) who acted on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(3) who act at some future time on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(4) who act at some future time on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(5) who acted on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(6) who act at some future time on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(7) who acted on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(8) who act at some future time on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(9) who expended efforts that in whole or in part resulted in or created a model for programs in this Act;

(10) who acted on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection; or

(11) who act at some future time on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection.

(d) REPORT.—

(1) Each attorney whose fees for services already rendered are subject to subsection (a) shall, within 60 days of the date of the enactment of this Act, submit to Committees on the Judiciary of the House of Representatives and the Senate a comprehensive record of the time and expenses for which the fees are to be paid. Such record shall be subject to section 1001(a) of title 18, United States Code.

(2) Each attorney whose fees for services rendered in the future are subject to subsection (a) shall, within 60 days of the completion of the attorney's services, submit to Committees on the Judiciary of the House of Representatives and the Senate a comprehensive record of the time and expenses for which the fees are to be paid. Such record shall be subject to section 1001(a) of title 18, United States Code.

(e) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of this section and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(f) GENERAL LIMITATION.—Notwithstanding any other provision of law, for each hour spent productively and at risk, separate from the reimbursement of actual out-of-pocket expenses as approved by the court in such action, any attorneys' fees or expenses paid to attorneys for matters described in subsection (c) shall not exceed $250 per hour.

Mr. FAIRCLOTH. Mr. President, I am offering this important amendment because we cannot allow this tobacco bill to turn into ''Wheel of Fortune'' for trial lawyers. That is why my amendment caps attorney fees at $250 per hour.

Under the current bill, trial lawyers will get some $4 billion per year. Billion—with a ''b''. And this is a conservative estimate—assuming a 15 percent contingent fee. The Medicaid cases will generate $1.2 billion per year. The tort cases will yield some $2.8 billion per year.

A Florida circuit court judge, Harold Cohen, estimated their fees at $185,186 per hour.

Let's see how this compares to regular Americans.

The average physician earns $96.15 per hour, the average lawyer makes $48.07 per hour, pharmacists make $25.98 per hour, police officers earn $16.65 per hour, carpenters make $13.03 per hour, automobile mechanics earn $12.35 per hour, barbers make $8.37 per hour, and bakers earn $7.65 per hour.

The PRESIDING OFFICER. Under the previous order, the Senate is to recess at 12:30. That hour having arrived——

Mr. HOLLINGS. Mr. President, I ask unanimous consent it be extended until 12:45.

The PRESIDING OFFICER. Is there objection?

Mr. FAIRCLOTH. I do not object.

The PRESIDING OFFICER. The Senator is recognized until 12:45.

Mr. FAIRCLOTH. So, Mr. President, who are these ''superman'' lawyers who deserve to be paid more than 20,000 times the salary of a working American?

Well, one of them is Hugh Rodham, the President's brother-in-law. He is on line to get $50 million as a Castano group lawyer. Let me tell you about the hard work that he has done to get this big fee. Let me tell you about his background that made him so important to this group of trial lawyers.

Well, actually, let me just read a couple of quotes from major newspapers to describe his work.

''And just for good measure, the state of Florida has hired Hugh Rodham (Hillary Clinton's brother) to be a part of their litigation team, despite his complete lack of experience in these types of cases.'' That's from the Knoxville News-Sentinel on July 20, 1997.

Here is another choice description of the fifty-million-dollar man and his invaluable work.

Hugh Rodham ''spen[t] the last hours of the June 20th settlement talks in a corner reading a paperback by Jack Higgins, 'Drink with the Devil.''' That's from the Washington Post on June 23, 1997.

Mr. President, I don't believe that this amendment needs much more justification than that. Fifty million dollars to sit there reading a book.

But, if that isn't enough, let me talk about the Texas trial lawyers. These fine lawyers will get $88,000 per hour. This means $88 million per lawyer. What more can I say?

Well, here's something. The money will be paid from money that was supposed to go for Medicare. Who do we pay—the sick and elderly or the greedy lawyers?

Mr. President, there is a major political force at work behind the scenes in this tobacco legislative effort. I'm not talking about so-called ''big tobacco.'' What I'm talking about is the trial lawyers.

They negotiate settlements in the millions of dollars, and they take fees in the millions of dollars, dwarfing what their clients get. They also stand to be the biggest winners if the tobacco settlement is enacted—a fact that appears to have become obscured in this debate.

Now, with this national tobacco litigation settlement before us, we're not just talking about millions of dollars, or tens of millions of dollars, or even hundreds of millions of dollars.

We are talking about tens of billions—with a ''b''—of dollars that will be transferred from the pockets of average smokers in this country into the coffers of a handful of trial lawyers.

I have read published reports that the trial lawyers are estimating that they will make upwards of $15 billion to $20 billion. That is hard to fathom.

To illustrate, in the two biggest individual State settlements that have taken place so far, take a wild guess at what the major issue of controversy has been?

For those of you who have not been paying attention, it has been attorneys' fees for the private plaintiffs' attorneys who were brought in to help the states sue the tobacco companies.

In the State of Texas, for example, their $15 billion settlement is tied up because the Texas trial lawyers demanded over $2.3 billion for their work. These demands are ridiculous, and if we approve the McCain bill, we will be approving such billion dollar deals for these trial lawyers.

Yes, the McCain bill provides the option for attorneys to use an arbitration panel to determine reasonable fees, but what attorney would be foolish enough to seek reasonable fees if they can get $2.8 billion. And, what is considered ''reasonable'' in this climate?

It is ironic that these trial lawyers were brought in by the various States to pursue claims on behalf of the taxpayers in those States.

That is, they have been brought in to stand in the shoes of our State governments and their taxpayers. But I ask you: who ultimately will be the greatest beneficiaries—the taxpayers or the lawyers? Experience has already provided us with an answer.

We should not forget how the deck has been stacked with respect to these State lawsuits. It was only when State governments decided to use their weight, leverage, and resources to go toe-to-toe with the tobacco companies that these companies decided to settle the cases.

States legislatures have even changed the laws mid-stream and retroactively to tilt the balance in their favor.

The most recent example of this was in April when the Maryland General Assembly voted to change the law to permit the State of Maryland to seek compensation for taxpayer money paid for smoking-related illnesses.

They first sued the companies, then realized winning the lawsuit perhaps was not going to be quite as easy as they first thought. They then went to the Maryland legislature and had the law changed retroactively so that their lawsuit against tobacco companies would be considerably easier.

You can be sure that the Maryland plaintiffs' attorneys who stand to have a huge pay day as a result of this lawsuit were closely involved in lobbying the legislature on changing the liability law.

I'm not saying that the attorneys' should not be reasonably compensated for the hours and energy they have spent in helping the States reach these settlements.

All I am saying is that it is outrageous to say that a group of plaintiffs' attorneys should be allowed to enrich themselves under the guise of claims on behalf of taxpayers. These are the same taxpayers on whose back the spending in the McCain bill will fall.

Let's also look at how this relates to our past debates over tort reform. The motivation behind national tort reform is that our system of justice has been distorted by a group of trial lawyers who caused the litigation explosion in this country.

At a minimum, it is highly ironic that we are now talking about passing a national tobacco settlement bill that will handsomely reward the very same trial lawyers who have so badly corrupted our justice system.

None of us should turn a blind eye to the fact that the debate on tobacco settlement legislation, under the guise of protecting youth, is really a debate about the pot of gold that potentially awaits the trial bar.

And that's not to mention the ''tax and spenders'' who want to fund a host of social programs unrelated to tobacco. Not only are we standing here debating a huge tax increase on working men and women, we are simultaneously opening a can of worms.

We're talking about sanctioning a handful of attorneys' attempts to enrich themselves at the expense of the clients—in this case, taxpayers—they purport to represent. I urge all my colleagues to give this serious thought.

This tobacco bill is not a lottery. This is not ''jackpot justice'' for trial lawyers. The trial lawyers are playing ''Wheel of Fortune'' with the taxpayers money and it must be stopped.

I urge you to support my amendment.

RECESS

The PRESIDING OFFICER. The Senate stands in recess until 2:15.

Thereupon, at 12:47 p.m., the Senate recessed until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I ask unanimous consent that no second-degree amendments be in order to amendment No. 2421 prior to a motion to table to be made at 5 p.m. I further ask unanimous consent that if the amendment is not tabled, Senator HOLLINGS be recognized to offer a relevant second-degree amendment and that the time between now and 5 p.m. be equally divided.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

Mr. MCCAIN. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 2421

Mr. HOLLINGS. Mr. President, in response to my distinguished colleague from North Carolina, Senator FAIRCLOTH, as the saying goes around here—and it is genuine—I have the greatest respect and friendship for the distinguished Senator. He and I have known each other for a good 30, 40 years almost.

I really am a little dismayed and disappointed to see this assault on attorneys' fees in the context of what is ethical on behalf of trial lawyers. When they put a billboard up with respect to ethical practices and making millions—we will get the board, I guess, and have it displayed.

But let me say a word, Mr. President, about lawyers themselves. A lot has occurred over my few years of public service. In the early days, what we had in the State legislature was about 85 percent of the membership was practicing attorneys. Today, fewer than 15 percent are practicing attorneys. That has come about, in a sense, as a result of billable hours.

When we came out of the war and set up our practices, what really occurred was we had to do services for the client, whether it was in the field of real estate, whether it was in the field of a criminal charge, or whatever. It was an agreed-to fee or, in many instances, a contingent fee on winning the case. That is how I grew up as an attorney, which characterizes me now as a ''trial lawyer''—I hope not an unethical one.

I was listening very closely to the Senator from North Carolina. The best I can tell is he used the expression ''litigation explosion.'' We can get into that. We have debated that, and we found through various studies made by the Rand Corporation for corporate America that there is no litigation explosion.

''Corrupted our justice system.'' The nearest thing I could find out was the fee itself, and it was too large, as the distinguished Senator surmised, and that in itself was unethical.

We know that people make money. I understand that the fellow on Headline News today, William Gates, a very, very successful entrepreneur, never completed college, but he is a genius with a business worth some $39 billion. He makes, doing nothing, just $125,000. I know he has a modest salary, but it would only go to the tax folks. But he operates, and he operates very successfully. They have 21,000 employees there at that Microsoft entity. Every one of the 21,000 is a millionaire due to the leadership and accomplishment of Mr. Gates.

Now, that is what is to be considered when we talk about trial lawyers taking on a noncase and developing a case. That really nettles my corporate friends. Incidentally, I should say this, that the corporate friends have been mine over the many, many years, as they well know from my votes here in the U.S. Senate. And we are very proud of the industrial development we have in South Carolina and the efforts of our Chamber of Commerce there. They are highly regarded, highly respected. But they had not gotten into this limbo, so to speak, of being unethical when you win a case.

Specifically speaking, going to lawyers generally, it is the genius of America that fashioned this great Republic. Lawyers, if you please, you can go back, Mr. President, to the earliest days. ''Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God. I know not what course others may take, but as for me, give me liberty or give me death!''—a lawyer, Patrick Henry.

Or otherwise that 30-some-year-old, with quill in hand, seated at that table, ''We hold these truths self-evident, that all men are created equal.''—Thomas Jefferson, the lawyer.

The most applicable one, Mr. President, to this present day, ''But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the greatest difficulty lies in this: you must first enable the government to control the governed and in the next place oblige it to control itself.''—that is our problem now—James Madison, a lawyer.

Or the Emancipation Proclamation—Abraham Lincoln, a lawyer. Or in the darkest days of the Depression, bringing about not only economic revival, but equal justice under law, ''All we have to fear is fear itself.''—Franklin Roosevelt, a lawyer. Or giving substance to equal justice under law—Thurgood Marshall.

I know the abhorrence some have for my friend, Morris Dees, down there with the Southern Poverty Law Center, or with Ralph Nader keeping the conscience clear with respect to consumer safety in America. But these are lawyers who are out leading the way.

There is no question, Mr. President, that there is no higher calling for a profession than to eliminate itself. If the ministers could eliminate all sin and the doctors all disease, we lawyers are burdened with the challenge of trying to eliminate injury in cases. When I first came to the Senate that was really what was at hand, what you might call class actions.

Up there in Buffalo, NY, Love Canal, toxic fumes, poisonous air. And as a result of the class actions there, the next thing you know what we had was the Environmental Protection Agency, which in and of itself, despite those who criticize the bureaucracy of it, has

eliminated not only the injury and drinking their own sewage and breathing their own toxic fumes, but eliminated thousands and thousands of individual cases.

Then next, of course, we had the matter of the asbestos cases. We had the cases with respect to the Dalkon Shield, breast implants; we had the cases of the little children burning up in flammable blankets in their cribs. And we got the Consumer Product Safety Commission. I just talked the other day to the chairman there who is doing the outstanding job that she is doing at the Consumer Product Safety Commission looking at all of these particular instrumentalities.

And good corporate America does just that. The J.C. Penney Company—there is no more outstanding firm. I have visited their laboratories where they have instituted safety tests of all the articles to be sold, particularly in the field of children's toys, and what have you. So the trial lawyers brought that about.

And, Mr. President, just this past week I noticed a little squib in the Times. They had down there that Ford Motor Company had recalled an engine. They took the initiative of recalling 1,700,000 pickup trucks because the link bolt on the wheel was loose. The wheel threatened to come off and cause an injury.

Now, Ford Motor Company was not particularly enthused about safety, we know, because back in 1978 Mark Robinson had to bring that Pinto case. And they got a verdict of $3.5 million actual damages and a verdict of $125 million punitive damages. No, they never collected a dime, I don't believe, for those punitive damages.

But I say to the Senator from North Carolina, I can tell you now, that saved a lot of injury and a lot of cases, because Chrysler has just had a recall that I saw in the news. And you can go right on down. That brought about attention to safety and people not burning up and having the wheels lock on them, and those kinds of things, and coming off and causing that injury.

That brings us, Mr. President, to the present case at hand, which, in essence, was not a case at all. I never heard of bringing in, in a class action, the tobacco companies and getting them to agree not to sell their product, but rather to advertise adversely not to sell, not to attract; on the other hand, agreeing, if you please, to a look-back provision whereby they would be burdened with the beauty of diminishing business for themselves, tobacco consumption, particularly in the field for little children, and raising the price of their product whereby the moneys would go then to the attorneys general and the U.S. Government to help pay these expenses, and so forth. That was not a case that was just filed and tried a few weeks later, and they got a verdict.

On the contrary, it was a long, hard, contingency struggle with a guarantee not only to get nothing had it not succeeded—and none have succeeded so far. I repeat, no one has sued a tobacco company and gotten a jury verdict as of this minute, period. But they said, we think we can do it if you let us try; and we will take it on a contingent basis. I do not know what the percentage is down in Florida or Texas or Mississippi where they have settled—somewhere around 10, 15 percent or whatever.

The States, the health community, the U.S. Government had nothing to lose. The lawyers bringing this pioneering, if you please, health care for all of America, they had everything to lose. In fact, a fine attorney general down there, Mike Moore, had to really withstand being sued by his own Governor of his own State of Mississippi trying to prevent him from bringing the case.

Don't give me this billable hours or $180,000 an hour or $5 an hour or whatever it is. This isn't any hourly thing. This is a no-case situation whereby you turn around and have to pay legal fees to defend yourself in order to bring the case, and he withstood that for a year in the courts with his reputation relatively ruined, but holding on. Then after they won that, they literally had to hide the witness and secure his safety because they had a whistleblower in one of the companies who was willing to bring forth the records and say here they are, here is the actual fact within the company records, here is what they stated, here is what their research found, here are their plans on advertising and here are the ingredients they also included in order to bring about addiction. They had to hide the witness.

Don't give me billable hours. I don't know how much hog farmers make. I am waiting for my friend to come back, but I know the lawyers make nothing unless they succeed in bringing this case. Now, of course, having done that, and getting these other lawyers in, his friend, Dickey Scruggs, and Ron Motley from my State of South Carolina, they had an expert approach. If a painter paints a $10 million painting, I don't know how much he gets an hour for painting it, but you have to have expertise.

The ingenuity of using the RICO provision of the distinguished Senator from Utah, that is what they did. They said we can use the RICO provision and really go after them. And that was a wonderful, ingenious approach to the actual trial of this particular class action. You have to understand all along nobody over the 3-year period is paying anybody a red cent when they talk about billable hours. So they brought their case, they struggled along, and they got right to the point where it was going to be exposed, that particular record of the unethical.

My distinguished friend on the other side of the aisle has a sign up there about ethical; it is the unethical conduct of the corporate lawyers, not the trial lawyers. They have not mentioned one thing unethical other than they won the case and they will get a good fee. They deserve every dime of it and more. They ought to get some kind of award from the health community because this will save us billions and billions of dollars in cost, in health care, hundreds and thousands and perhaps millions of lives from cancer deaths.

Not Dr. Kessler, not Dr. Koop, but Mike Moore, Dickey Scruggs, Ron Motley have done more to save people from cancer than Koop and Kessler combined, and Koop and Kessler have tried their best, but there is more than one way to skin a cat. No one in Congress was at that table. There wasn't any Senator—''I introduced the bill.'' There wasn't any Congressman, ''I sponsored, I cosponsored,'' all of this ''I'' stuff. Now they have a lynch mob going on because the polls show that lawyers are unpopular, particularly trial lawyers.

I have a friend in town here, sends me a thank-you note at Christmas, Victor Schwartz. We have been in this routine 20 years. Victor represents the business round table and the Chamber of Commerce, and he gets the conference board and he gets all these retainers so long as he doesn't win the case. It reminds me of Sam Ervin's famous story about the doctor who practiced there in Monroe, NC, for some 32 years all by himself. Finally, he had a young son who graduated from medical school and he turned to him and said, ''Son, I haven't had a vacation in 32 years. I am taking off with your mother for a couple of weeks.'' He comes back and the son walks up to him and he says, ''You know Ms. Smith, Daddy?'' ''What about her?'' He said, ''There is really no arthritis in her back, I got that thing cured.'' He said, ''Oh, my heavens. That is the patient that sent you through med school. Why did you do that?''

You can solve cases, but that is our problem with most lawyers now. As long as they can get a continuance, as long as they can make a motion, as long as they can delay, as long as they bureaucratize the judicial system—and that is the corporate defendant crowd. The plaintiff doesn't win until he concludes a case. He has no time; he has about five or six cases waiting, a lot of time out there, a lot of money, a lot of time investigating everything else. What happens is that he finally scores, but he not only scores for himself, he scores here in this particular case for all of America, because they met last June and they had the sensibility not to be greedy. The inference is that you have a greedy bunch that is unethical; they are getting too much. Not at all.

The fact is, they had the sensibility to say, like Kansas City, there is only so far that we can go. There has to be balance. If we put them out of business, if we continue to pressure and take legitimate companies out of business, then what will happen is that newcomers without these records that are really bringing about the settlements for us, they won't have any records of

any kind of additives. They won't have any records of any kind of lies to Members of Congress or anything of that kind. They won't have any records of agreeing not to advertise or agreeing to advertise adversely to children, or agreeing to a look-back provision. What we will do, like Samson, is pull down the temple walls and ruin us all and we will have gotten nowhere.

Now, we understand here this week we can get nowhere. We can start with lawyer fees. We can start with $1.50, $2 a pack, up, up and away. We can have impossible look-back penalties and everything else of that kind, but this isn't the end of Congress. We will be back and we can always amend what we never have tried before, like look-back and nonadvertising agreements.

But my counsel is let's move on with the provision of the commerce bill which says simply as to the agreements made within the States, we don't disturb them—all of them, as best I can tell, are under arbitration. But as to the new agreements made for lawyers, they are subject to arbitration for both sides and approved by the court itself. Now, there is nothing unethical or untoward or whatever it is. The beginning lawyers who made the case are deserving. The others who are piling on deserve a heck of a lot less. We all know that.

So we are not just setting an example here of $185,000 for nothing but trial lawyers as the thing is depicted at the present time.

I can see we have some others that would like to be heard at this particular time. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. I yield time to the distinguished Senator from Utah.

Mr. HATCH. I am very concerned about this and a whole raft of other amendments as well.

First of all, I think we need to examine the context in which this amendment is being debated.

If the members of this body succumb to the temptation to ''pile on'', to ''out-tobacco'' Big Tobacco—and that is surely where we are headed—we will guarantee that the tobacco companies are not part of the equation.

Why should we care about this? Tobacco causes cancer and a panoply of other serious diseases. The companies have known this for literally decades; they have known nicotine makes their products addictive. They have continued to market their products, and to target their marketing plans and their advertising to children.

That being said, I implore my colleagues to recognize that if the tobacco companies are not part of the equation, then we will not have a meaningful bill that can work. It is as simple as that.

Last June 20, the tobacco companies agreed voluntarily to make payments which will range up to $368.5 billion over the next 25 years. They freely chose to make those payments, payments which will help Congress fund a new War on Tobacco, in exchange for certain changes in the law, such as a more predictable litigation environment.

In order to devise a bill which is workable and which will not be litigated for years, we have to respect the legal boundaries imposed by our Constitution, that great document upon which our Country was founded. Constitutional scholars have examined the provisions incorporated in the Commerce bill, and have found them to be lacking.

For example, public health experts have testified before our Committee that advertising restrictions are an important weapon in any new War on Tobacco. But legal scholars have also cautioned that those restrictions must be drafted in a manner which is constitutionally permissible—which, by the way, this bill is not.

As chairman of the Judiciary Committee and as someone who has been concerned about constitutional principles during my tenure in office, I must caution that unless this bill is changed in some very fundamental aspects, we will wind up in 10 years of litigation over a variety of issues, not the least of which will be constitutional issues that will literally cause more problems than anyone ever envisioned.

During each of those years, one million more kids will become addicted to tobacco and will die prematurely because the Congress is pursuing a constitutional collision course which could ultimately render substantial parts of the Commerce bill null.

It is important to note that, while the tobacco companies voluntarily agreed to the $368.5 billion amount, they have refused to agree to the Commerce bill's $516 billion price tag.

We have all seen estimates that the Commerce bill will add $1.10 to the price of a pack of cigarettes in the next five years. What that Treasury estimate does not take into account are any increases due to State excise taxes, wholesaler or retailer markups, attorneys fees, reductions in volume due to increases in black market sales, or imposition of ''look-back'' penalties.

Let us be real. The manufacturers, for instance, added 5 cents per pack solely because of just one State settlement, the Minnesota settlement.

The $1.10 figure is a myth.

During the course of 10 hearings on the tobacco issue, the Judiciary Committee heard an abundance of evidence on this issue.

We had three financial analysts testify at our hearings, each of whom did independent analyses, using very detailed economic models, and none of them concurred with an estimate as low as $1.10. Their estimates ranged as high as $2.50 to $3.00, for a total cost of about $5.00 per pack.

If that happens, there will be a raging black market. It will be even worse than it is now. We have received testimony that one out of five cigarette packs sold in California today is contraband. Can you imagine what is going to happen if this bill forces tobacco prices up to between $4.50 and $5.00 per pack?

There is an additional implication that, with the exception of our colleague from Texas, Senator GRAMM, and our colleague from Illinois, Senator MOSELEY-BRAUN, no one is focusing on.

Who will bear the brunt of these increased costs, of these new payments intended to curb youth smoking? It is adults at the lower end of the economic spectrum. For example, almost one-third of people with incomes below $10,000 per year are smokers.

It would be better to bring this agreement into some perspective where we can get the tobacco companies on board, however reluctantly.

I would like nothing more than for them to pay $1 trillion per year. But the practical reality is that that will not happen. They will either move offshore or go bankrupt first, and they will be totally beyond our control.

If we design a program which does not have their open opposition, which is modeled on their voluntary agreement of June 20, 1997, we will have effective accountability, because we will have look-back provisions that are constitutional. We will have an effect ban on advertising provisions, because without their compliance Congress cannot enact stringent advertising restrictions. In short, without the reluctant agreement of the tobacco companies, we will not have the comprehensive program that many of us want.

Having said that, I have listened carefully to my colleague from South Carolina.

It is well known that I have been an advocate for legal reforms.

It is well known that I am supportive of product liability reform.

It is well known that I have not been someone who just is a rubber stamp for the trial lawyers of America, even though I have been one myself.

It is well known that I think there are excesses in the law.

But I think we go a long way toward being excessive as a Congress if we start setting fees for professionals in our society, professionals who are not directly participating in a government program.

If we allow ourselves to start dictating what fees have to be paid to certain professions in our society, however tempting, then I think we are starting down a dangerous road.

How can conservatives support setting fees in a free market system? That is as bad as setting prices.

I have extensively examined the tobacco issue. One thing has become evident. We would not be here today debating this legislation were it not for the Castano attorneys.

The distinguished Senator from South Carolina has made some very telling points. Yes, there are excesses. Yes, there are things we can criticize.

Yes, we know that many of the trial lawyers have been associated with one political party.

That irritates some people, and rightly so. But the fact of the matter is that he is right. It has been the contingent fee system that has allowed people who do not have any money to be able to defend themselves, to assert their rights, and to obtain verdicts in their best interests. And without the attorneys being willing to take cases on a contingent fee basis, many of the wrongs in our society would not be righted.

Frankly, I have been on both sides. I started out as an insurance defense lawyer. I tried medical liability defense cases. I know what it is like to have people, plaintiffs lawyers, bringing lawsuits, some of which are trumped up.

But I have also been on the other side where people who were humble, without money, had no recourse other than to hope they could find an attorney who would take their case on a contingent fee.

This meant that if I didn't win the case, I didn't get paid. If I won the case, then I got somewhere between 25 and 40 percent of the verdict. I never had a case where my client got less as a result of the contingent fee paid to me than they would have gotten by a settlement before a verdict—never, at least not to my recollection.

On this particular issue, Senator MCCAIN and those who have written this bill—basically the White House, if you will—inserted a reasonable provision. That provision says that, for the purposes of awarding attorneys' fees and expenses for those actions, the matters of issue shall be submitted to arbitration before a panel of arbitrators.

In other words, they are not going to give the trial lawyers a free ride here. They are going to require them to submit their fees to arbitration. They are going to have to come in and justify those fees.

In any such arbitration, the panel shall consist of three attorneys, one of whom will be chosen by the Castano plaintiffs' litigation committee, that is, the plaintiffs' attorneys who were signatories to the June 20, 1997 settlement agreement.

It seems to me that our distinguished Senator from Arizona did a good job in putting this provision in. A similar provision is in the legislation I filed on November 13.

This represents a reasonable approach to the problem.

The fact of the matter is that I have devoted a lot of study to the Castano group.

And, yes, most of them are Democrats. Most of them are liberal Democrats at that. But there are a number of them who are Republicans, a very small percentage of them.

The fact of the matter is that politics should not play a part in this. Without the Castano group, we would not be debating this issue; we would not have been able to bring national debate to the point of considering a bill which penalizes the tobacco industry anywhere between $368.5 billion and estimates as high as $800 billion over 25 years.

I believe that members of the Castano group alone have spent somewhere between $20 million and $40 million in basic time alone. That is a lot of money. Some have argued that this figure could approach $100 million.

This has been going on for years, in State after State. It has been going on at the expense of the attorneys, without whom we would not be having this opportunity to start a whole new national War on Tobacco.

I have to admit, at times my angst over the trial lawyers' support for one side or another shows at times. That is true for most Senators. And the trial bar has brought a lot of this criticism upon itself, to be fair. They seem to be looking out only for their interests sometimes, which is not unusual in the business community.

But we should not allow that to cloud the facts on this issue. We should think twice before we move toward having the Congress of the United States set attorneys' fees.

What is it going to be next? Accounting fees? What is it going to be? Private doctors' fees? Our public attempts at rate setting already have proven how government interference can distort the marketplace.

But I agree with the Senator from South Carolina—this is the last bastion of freedom there is.

Whether you like the trial lawyers or not, they take cases that nobody else will take. They do it at their own expense many times. Yes, they make a lot of money, if they are good enough. But the fact of the matter is they play a very significant and important role in our society. It is just that simple.

I agree with many of my colleagues on the other side. Large hourly legal fees are a concern. That is why the bill sets up an arbitration panel which will examine fees based on set criteria such as the time spent and the complexity of the case. Attorneys should have to justify their fees; I don t disagree with that position.

I cannot condone legal fees which approach $1,000 per hour. But that is not the real issue. When we start setting attorneys' fees, whether they are $100, $250, $500, or $1,000, it is a very serious matter.

PRIVILEGE OF THE FLOOR

I ask unanimous consent that Bruce Artim and Marlon Priest of my staff be permitted privileges of the floor throughout this session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Let me close with this.

I am very sympathetic to the motivation of this amendment and to the arguments that the Senator from North Carolina has made.

However, there are a number of reasons that I have given here that this amendment is flawed and, in fact, is unlawful.

As much as I dislike this Commerce Committee bill, and as much as I think it is a piling on, the approach it uses to resolve the attorneys' fees issue is far more preferable than an arbitrary price cap.

For Congress to interfere retroactively with private contracts would be, in my opinion, unconstitutional. Congress should not break private contracts.

The June 20, 1997, settlement recognized that a private agreement between a plaintiff and his or her attorney is a legally enforceable contract with which we should not unilaterally interfere, however well-intentioned our motives are.

Such interference by capping a contractual fee might very well constitute a taking under the Fifth Amendment to the Constitution. The Supreme Court cases clearly say that the Federal Government cannot confiscate money or interfere with a lawful contract.

Under any view of federalism, there is no justification whatsoever for Congress, entering the field of pure State activity to alter the rights and remedies of private parties and then dispensing, with no due process, protections guaranteed by the Constitution.

Regulation of attorneys' fees properly belongs in the domain of the States. Such usurpation of State prerogatives may very well violate the Tenth Amendment. Recent court opinions such as New York v. United States and Prinz v. United States have made the Tenth Amendment a shield against Federal imposition on the sovereign authority of the States.

State courts have already shown a willingness to step in and prevent unreasonable and excessive fees in tobacco settlements. For example, in the Florida case, the Court threw out a contingency fee arrangement where it was found to be clearly excessive. This shows that the State courts will be best equipped to address this issue by utilizing the arbitration clause of the Commerce Committee bill.

I think we must also examine the precedent we are setting here in having the U.S. Congress consider singling out any profession for a cap on their earnings. We do not do this for corporate CEOs, although we have tried in the past. We don't do it for sports figures or entertainers, for that matter. Should we consider capping Jerry Seinfeld's pay because he makes tens of millions of dollars a year, or my dear friend Karl Malone because he makes millions of dollars every year as one of the greatest basketball players who ever lived?

No, we don't do that, and we should not be doing it here, even though I do have some sympathy for what motivates the distinguished Senators on the other side of this issue.

I compliment my friend from South Carolina in his statements here today.

They are fair statements for the most part, arguing that, without the trial lawyers being able to take contingent fee cases and to be able to uphold the rights of the downtrodden and those who don't have any money and those who can't afford any attorneys, we would not have nearly the justice ideal we have today.

I also compliment my colleagues from Alabama and North Carolina, who have argued very forcefully and potently for this amendment. They make a number of compelling arguments.

I know I have taken too long and I apologize to my colleagues. I feel deeply about this.

I recognize I have irritated just about everybody in the debate. I haven't meant to. It isn't my desire.

I feel very deeply we need to pass a strong anti-tobacco bill which is constitutionally sound and which will not be litigated for years. The best way to do this is to model it after the agreement reached last year between all the parties.

That, I believe, would be in the best interests of our children.

I cannot tolerate the fact we are going to have 10 years of litigation because we are considering faulty legislation. We should be pulling the companies in, albeit kicking and screaming, and making them be active participants. I want them to be part of the solution. Some may view that as naive, but I am optimistic.

The fact that we are considering legislation with such obvious flaws bothers me terribly. I am also bothered by the fact that we will go so far as to start setting professional fees here in the Congress of the United States.

Having said that, I yield the floor.

Mr. HOLLINGS. Mr. President, I think the distinguished Senator from Utah has made a very, very powerful statement. We are most grateful.

I yield to the distinguished Senator from Illinois 10 minutes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, let me say to my friend, the Senator from Utah, I appreciated his oration and his irritation. He plays a valuable role in the Senate, and he raises issues that are important to all of us regardless of on which side of the aisle we fall.

This amendment, sponsored by the Senator from North Carolina, Mr. FAIRCLOTH, is one which we should understand what it stands for. This is an amendment to limit the attorneys' fees that will be payable to plaintiffs' attorneys who joined with all the States' attorneys general to bring the lawsuits against tobacco companies.

Now, to paraphrase my friend, the Senator from Arkansas, Mr. BUMPERS, the tobacco companies hate these attorneys like the Devil hates holy water. Were it not for these attorneys, there would be no McCain bill in the Chamber this week. Were it not for these attorneys, there would have been no State lawsuits. Were it not for these attorneys, these tobacco companies would continue to make billions of dollars, would continue to exploit our children, would continue to be the source of the No. 1 preventable cause of death in America month after month, year after year, and decade after decade.

So it is no wonder that the Senator from North Carolina wants to get even with these attorneys. They have upset the applecart for Tobacco Row. These attorneys have joined with States' attorneys general, 42 of them, to bring lawsuits which have successfully brought the tobacco companies to their knees. And if this Senate has the courage this week that I hope it does, we will pass the most comprehensive historic legislation this Nation has ever seen to protect our children from continued exploitation by these tobacco companies.

So here comes the Senator from North Carolina, and he says, well, I think it is only reasonable that we limit these attorneys to fees of no more than $250 an hour. At least I think that is what his amendment says; it has been written over a couple times. But I think that is what he ended up concluding. For most people in America, $250 an hour is an amazing amount of money. To anybody who would think about making $10,000 a week, that is an amazing amount of money. But, ladies and gentlemen, we are talking about attorneys who are playing in the big leagues here.

Isn't it interesting that all of his rancor and all of his anger about attorneys' fees only affect the fees that are being paid to attorneys who are fighting tobacco companies. I have searched this amendment, line for line and page for page, to find some limitation on the amount of money paid to the attorneys for the tobacco companies. No, not a single word of limitation. Pay them what you will. But the plaintiffs' attorneys, representing the children who are being exploited by these companies, the plaintiffs' attorneys who come in here representing flight attendants to try to make sure in a courtroom that they are protected from the kind of secondhand smoke that is damaging, those are the targets of the Senator from North Carolina.

Isn't it an amazing thing that these tobacco companies, when they put their enemies list together, put at the very top these attorneys. Well, why did these State attorneys general bring in these private attorneys as part of the lawsuits? For one simple reason: They didn't have the resources in many States to really go after these tobacco giants, so they brought in the trial attorneys and they said, ''If you are going to sue the tobacco firms, do it on a contingent basis. If you win the lawsuit, which has never been done—never been done—if you win the lawsuit, you will win a substantial fee. If you lose, you go home emptyhanded.'' These attorneys said, ''We will take it on; on a contingent fee basis, we will take it on.'' And guess what. They are about to win. If we do the right thing, they will win. In at least four States, they have won. It just angers the tobacco companies to think that they are going to have to pay the fees of the attorneys who sued them.

Why did we need these attorneys? Because, honestly, ladies and gentlemen, when it came to Congress, when it came to State legislatures, when it came to many Governors' offices, and, yes, even when it came to the White House year after year and time after time, the tobacco companies had a cozy relationship. They knew no one was going to go in and challenge them.

Mr. FAIRCLOTH. Will the Senator yield?

Mr. DURBIN. But in a courtroom, it is a different story. In a courtroom—I will when I finish; I will be happy to yield when I finish. In a courtroom, it is one attorney against another. It is a jury of peers, 12 Americans sitting in judgment, and that is when the tobacco companies are being brought to their knees. They could not buy it through lobbyists. They could not buy it through political contributions. They had to walk into a courtroom. And when it happened in 42 different States, they said, ''It is time to settle. The game is over.'' So naturally they are angry with these attorneys, these trial lawyers who have brought them to their knees.

And think about the limitation of $250 an hour. Not a word about limiting the amount of money paid to the tobacco company attorneys, and certainly not one word about limiting the money paid to the tobacco company executives. Four years ago, do you remember that shameful scene when seven tobacco company executives, under oath, in the House of Representatives swore to God on a stack of Bibles that tobacco was not addictive? Tobacco is not addictive. Imagine they would say that. And these men, who were being paid millions of dollars a year by exploiting our children and selling their products, are not even mentioned in this amendment.

Now, if we are going to work out some moral outrage about how much money we are going to pay people, then let us include not just trial lawyers. Let's include the attorneys for the tobacco companies. Let's include the tobacco company executives. Or let's call this amendment for what it is. This is an effort to get rid of the element that has brought the tobacco companies finally to this Senate floor and brought us finally to comprehensive legislation.

I yield to the Senator from North Carolina.

Mr. KERRY. Not on your time.

Mr. FAIRCLOTH. Does the Senator have a copy of the amendment?

Mr. KERRY. Mr. President, I would ask the Senator to yield on the time of the Senator from North Carolina.

Mr. FAIRCLOTH. I am satisfied.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. FAIRCLOTH. Does the Senator have a copy of the amendment?

Mr. DURBIN. I have the amendment 2421.

Mr. FAIRCLOTH. Look at the top of page 2 and line 10 at the bottom. What does it say?

Mr. DURBIN. I am sorry. Page 2?

Mr. FAIRCLOTH. Page 2. Read the top line.

Mr. DURBIN. ''* * * made public disclosure of the time accounting under paragraph (1) and any fee * * *''

Mr. FAIRCLOTH. Now read the bottom, line 10. It clearly includes the attorneys for the tobacco companies.

Mr. DURBIN. I am sorry, Senator. I do not see that reference in here in the copy I have.

Mr. FAIRCLOTH. If the Senator will read, at the top, it clearly says—in the English language it is pretty clear—that it includes all matters, defendant or otherwise.

Mr. DURBIN. I am sorry, but I do not see that reference, unless this is another copy of the amendment.

Mr. FAIRCLOTH. ''* * * who acted at some future time on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection.''

Mr. DURBIN. Will the Senator clarify then, is he saying that any of the attorneys hired by the tobacco companies and paid by the tobacco companies relative to this litigation will be limited to how much they will be paid——

Mr. FAIRCLOTH. Yes.

Mr. DURBIN. By the tobacco companies?

Mr. FAIRCLOTH. That is exactly what I am saying.

Mr. DURBIN. Whether that money comes through this agreement or not?

Mr. FAIRCLOTH. That is exactly right.

Mr. DURBIN. How will the Senator possibly monitor that and police that in terms of the banks and hoards of attorneys who represent these tobacco companies? In the issue of the plaintiffs, we clearly have a case with an attorney general and we have a law firm that has reached an agreement and contract with them. Is the Senator from North Carolina saying, then, that as to all the activities of attorneys for tobacco companies that he is going to limit their fees to $250 an hour?

Mr. FAIRCLOTH. If they submit a record, they will have to submit a record to the Congress. And of course it would be perjury to lie about it. They have to submit the record. Yes, I am saying they are going to be held responsible. And to the same fees that we are paying the plaintiffs' attorneys.

Mr. DURBIN. What if they have already been paid?

Mr. FAIRCLOTH. Then it will be up to the tobacco companies to make an adjustment.

Mr. DURBIN. The tobacco companies will have to call their attorneys in and make an adjustment under your act?

Mr. FAIRCLOTH. Yes.

Mr. DURBIN. I say to the Senator, I believe that is a very difficult thing to accomplish. I don't think it is going to happen. What the Senator is asking——

Mr. FAIRCLOTH. It is difficult to see $185,000 an hour paid to plaintiffs' attorneys that come out of the working people of this country, too. And that bothers me considerably.

Mr. DURBIN. Mr. President, I say to the Senator the money that comes into this comes from tobacco companies which have made a profit at the expense of children and Americans for a long period of time.

Mr. FAIRCLOTH. I beg to correct you. It comes from the taxpayers of this country. The tax is on cigarettes and cigarettes are smoked by generally people with incomes of less than $40,000 to $50,000 a year. They are going to pay 70 percent of this tax. We are going to buy Lear jets for attorneys out of the working people of this country because 70 percent of this money we are going to pay to these attorneys comes from people making less than $40,000 a year. And how anybody can justify paying an attorney $100,000-plus an hour, and taking it out of the pockets of people making less than $40,000 a year, I don't know.

Mr. DURBIN. Let me say to the Senator from North Carolina, what I understand this bill to include is an arbitration proceeding, if there is any question about the fees to be paid to attorneys, and in the case of the State of Florida, that in fact occurred. The attorneys' fees were reduced. But let's not lose site of the bottom line here. Were it not for these attorneys bring these lawsuits, we wouldn't be here today. We would not be discussing that legislation.

Mr. FAIRCLOTH. I don't know that that is true. But they arbitrated it in Florida down to $180,000 an hour. But I would like to yield the floor now to Senator SESSIONS.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from Illinois controls the floor—has the floor.

Mr. DURBIN. How much time do I have?

Mr. KERRY. Mr. President, I believe the time agreement was the time would come from the Senator from North Carolina.

The PRESIDING OFFICER. That is correct.

Mr. FAIRCLOTH. The time was yielded to me, Mr. President. Our debate was on my time.

The PRESIDING OFFICER. Right. The Senator from Illinois does control the floor. The time was charged to the Senator from North Carolina. So the Senator from Illinois still has the floor.

Mr. DURBIN. I believe the Senator from South Carolina recognized me for 10 minutes. Do I have any time remaining on that?

The PRESIDING OFFICER. The Senator has 4½ minutes.

Mr. DURBIN. Mr. President, 4½ minutes? I yield that back to the Senator from Massachusetts, who has been kind enough to wait.

Mr. KERRY. I thank the Chair. I understand the Senator wants to yield some time now. I think we can go back and forth.

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. Thank you. I yield the time, I yield whatever time is desired by the Senator from Alabama, Mr. SESSIONS.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. KERRY. Mr. President, point of inquiry?

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. If I could ask the Senator from Alabama how much time he might use so other colleagues can plan, so we can proceed down?

Mr. SESSIONS. Mr. President, 15 minutes.

Mr. KERRY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, this is, indeed, an important issue. We have heard a lot today about validity of contingent fees. Historically, contingent fees have not been favored by the law. They have been scrutinized. Lawyers ethically were supposed to take fees on a paying basis unless the person could not afford to hire a lawyer—but we have always affirmed a contingency fee basis. I am not here to criticize that. I am not. This legislation in no way would stop private attorneys from going forward with contingent fee arrangements with their clients. As an attorney, I have filed cases on an hourly fee basis and on a contingency fee basis. I don't think there is anything wrong with that and I don't mean to suggest there is.

But in the history of litigation, in the history of America, in the history of law, in the history of the world there have never been fees equivalent to the ones we are talking about today. They go beyond anything we can imagine. These fees are beyond any payments that have ever been known in the world of law. I call them the mother of all attorney's fees. This is a serious matter.

The attorneys general of the United States have come to this Congress, this Senate, and they have asked us to approve a settlement, to add things to it, to review it and comprehensively deal with this matter. So one of the things that we have to deal with is attorneys' fees.

Under the Constitution, the Congress is empowered to regulate. We do it when we enact a minimum wage. A person has a contract with somebody at $4 an hour, and we say the wage ought to be $5 an hour; that contract is vitiated. We have a lot of containment of attorney's fees in America.

Indeed, with regard to Social Security cases, there is a limitation on attorney's fees. With regard to the Criminal Justice Act, the limit is $75 an hour. Under the Equal Access to Justice Act, attorney's fees are limited to $125 an hour. Limitation of attorney's

fees is common. We have had a number of research papers written on fee limitations. A professor from Cardozo School of Law has written comprehensively on this legislation and says it is, indeed, constitutional.

To illustrate the amount of money at issue in these cases, I would like the people of this country and the Members of this body to think about this: The yearly general fund budget for the State of Alabama is less than $1 billion. In Texas, a judge has approved payment of $2.3 billion to a handful of lawyers for this litigation. They approved that kind of fee.

In Florida, attorneys are still battling to obtain $2.8 billion in fees—that is two thousand eight hundred million dollars—two thousand eight hundred million dollars. That is absolutely unconscionable, as a judge in Florida said, and as anyone who has any sense of decency ought to understand. We have been asked to pass legislation dealing with this health care problem and try to do something about teenagers and smoking? We have a right to pass legislation dealing with attorney's fees.

Let me share something with you. People may not understand exactly how all of this has occurred. I have a transcript of a recent 20/20 program about the Florida attorney's fees debate. Let me share some of what was said in that program. The segment is entitled, ''What A Deal.''

HUGH DOWNS. What is your time worth? How does $7,000 an hour sound? That's what some lawyers want to be paid for their work on Florida's suit against the tobacco industry. Each and every one of them could become a millionaire many times over, just from this one case.

So, did they really earn their fee? Well, John Stossel tells us how the lawyers came to demand a king's ransom for their work.

JOHN STOSSEL. The children are supposed to benefit from the new money for antismoking programs. And later the governor invited in some children and dummied up a check to celebrate the first $750 million payment. But now it turns out that Florida's taxpayers may not get as much of that money as they thought because Florida lawyers are in a legal battle over how much money they should get.

Montgomery, the plaintiff's lawyer in the case, says they deserve $2.8 billion. That's right—billion, says Stossel.

He (referring to Mr. Montgomery) doesn't exactly need the money.

This is his multimillion-dollar house in luxurious Palm Beach right next to the ocean.

The house is so huge, it looks more like a palace. Even his Rolls Royce and his Bentley live in a garage that's bigger than many houses. Montgomery got this rich suing carmakers and hospitals and insurance companies.

BOB MONTGOMERY. So this is my putting green, and this is my sand trap. And what I do is I have these balls, and this is where I drive them.

JOHN STOSSEL. Out into the water?

BOB MONTGOMERY. Out into the water.

He has so much money, he doesn't worry about his golf balls. He hits them out into the ocean.

JOHN STOSSEL. The inside of the house is even more grand. Montgomery has a vast art collection.

Another attorney, Mr. Fred Levin, defends the fees.

FRED LEVIN. It was contracted.

JOHN STOSSEL. So who made this contract?

FRED LEVIN. Well, the State did. It was a valid, legitimate contract.

JOHN STOSSEL. Fred Levin helped the governor put the deal together.

You're a private lawyer? (Asked of Mr. Levin.)

FRED LEVIN. Right.

JOHN STOSSELL. What are you doing there? Just giving advice?

FRED LEVIN. Well, yes.

JOHN STOSSEL. Friendly advice?

FRED LEVIN. Yes, I was a—I'm a good friend of the governor's.

JOHN STOSSEL. Friendship starts to explain how some of these private lawyers were selected and ended up with a contract that says each now is entitled to hundreds of millions of dollars. It began four years ago, when Levin came up with a scheme to use Florida's legislature to make it easier to win a suit against big tobacco.

FRED LEVIN. I took a little-known statute called a Florida Medicaid recovery statute, changed a few words here and a few words there, which allowed the state of Florida to sue tobacco companies without ever mentioning the word ''tobacco'' or cigarettes. The statute passed in both the house and the senate. No one voted against it.

JOHN STOSSEL. Well, did the people know what they were voting for?

FRED LEVIN. No. And if I told them, they'd have stood up and made a—you know, they'd have been able to keep—keep me from passing the bill.

JOHN STOSSEL. This made the suit much more winnable?

FRED LEVIN. Oh, God. It meant it was a slam dunk.

JOHN STOSSEL. And who would get to be the lead lawyer on this slam-dunk offense?

FRED LEVIN. Initially, I was assuming that I would be bringing the case. But then they said, ''Fred Levin's going to make all the money.''

JOHN STOSSEL. Fred Levin's doing a scam here. He's changing the law so he can get rich.

FRED LEVIN. So I went to the governor and I said, ''Listen, let me help you get a group of lawyers together, our dream team, and I'll get out.''

Mr. Montgomery suggests that if he lost the case, he would have been out $500,000. He probably has that much invested in all of his automobiles in this mansion he has. He suggested his cost was $500,000.

JOHN STOSSEL. Am I missing something here? The controversy has become, should the dream team get billions from the 25-percent deal they have with the State or from arbitration? My question is, why do private lawyers get so much of the State's money in the first place? When this construction company got the contract to replace this Florida bridge, they had to compete against other construction companies. There was competitive bidding. To win the job, they had to show they were qualified and submit the lowest bid. All States have such rules to prevent politicians from funneling projects to their friends. But that's not what happened with the lawyers. Here, Fred Levin called some friends. You picked the dream team.

Then Mr. Stossel discussed how the deal was negotiated and the fact that Mr. Levin and the Governor were close, riding in the same car together.

Then Mr. Stossel asked Mr. Levin why the Governor was spending the night at this trial lawyer Montgomery's house.

FRED LEVIN. Well, when he's in Pensacola, he sleeps at my house, so—

JOHN STOSSEL. That week, Levin threw a big party. His estate's so big he buses the guests in from where they've parked their cars. The Governor came, of course.

And they talked about how the Governor's guests had raised a lot of money for him.

As Professor Lester Brickman of Cardozo Law School said:

It's an outrage. It's more than greed, it's a scam.

JOHN STOSSEL. Law professor Lester Brickman, who's an expert on legal fees, says it's not right to hand such a lucrative-fee case to a friend.

This is the issue we are talking about today. I was attorney general of Alabama when this litigation was being suggested. I had groups of trial lawyers come to me and ask me to file the litigation. We had meetings and we discussed it. They wanted a contingent fee, as I recall, 25 percent of the recovery.

I remember saying, ''Well, some of the States are moving along fine in this litigation. If they win, I assume Alabama will be able to win with our own staff. I don't believe we need you to represent us.''

They said, ''Well, you don't just hire us, you can hire some of your law firm friends, too. You can cut them in on the deal.'' That was one of the things they suggested to me.

I said, ''We're not hiring lawyers for friendship. We're not hiring lawyers to pass out funds to people we want to give money to. If we need a lawyer, we'll hire a lawyer.'' I didn't do so.

Basically, what I had predicted came true. When the end came, the tobacco companies settled all over America. Some States had hired lawyers on a contingent-fee basis, lawyers that may have only worked a few weeks or months, and then began to come in and claim 25 percent of $2 billion, $3 billion, $15 billion. This is supposed to be fair and just? I submit that it is not.

My good friend and chairman of the Judiciary Committee, on which I serve, expressed real concern that we ought not attack contingency-fee contracts, as these contracts benefit people who cannot afford to hire lawyers on an hourly basis. I don't intend to undermine normal contingent-fee contracts, and nothing in our amendment does that.

I think everyone needs to know that this McCain bill that the administration has approved and signed off on, and the trial lawyers, I suppose, have signed off on, calls for a panel of arbitrators. It consists of three people: The Castano plaintiffs; I understand one of them may get $50 million out of this litigation. Plaintiffs would have one member on the arbitration panel. The other members of the group would be the manufacturers and the attorney

general. They get to pick the second one.

But you see, there is a problem there, because the accord really is between the manufacturers and the attorneys general and the plaintiffs' lawyers. I submit that they are not defending the best interests of the people—they signed those contracts together.

In this situation, the plaintiff lawyers have placed themselves in—and I don't know any other way to say it—a conflict-of-interest position. When the tobacco companies agreed to settle, they went to the lawyers on the other side and said, ''Now, let's talk about your fee. We won't pay all the money to the State and let you be paid by the State, because that would look bad. We'll just have a little side agreement, and we'll pay your fee, and it won't come out of the State's money.''

The attorneys general agreed to that. So the attorneys general are in on the agreement. And the plaintiff lawyers are in on the agreement. And the tobacco companies are in on the agreement. Anybody who knows anything about economics and thinks realistically about this matter will know there are not two separate pots of money.

The attorneys' fees and the recovery by the States are all payments by the tobacco companies to get these people off their backs. The tobacco companies do not care whether lawyers get the money or whether the children of the State or the children of the United States get the money. They are not concerned about that. They want this litigation over.

So this is what we have. The more you pay the lawyers, the more likely they may be to compromise the interests of the State and the children. Every dollar that goes to them is a dollar that would not go to the children.

The third member of this arbitration panel is picked by the plaintiffs and the manufacturers and the Attorney General. So you have more of the same. This is not an effective arbitration panel. It is a stacked deck. I am not sure some of the people who defended this panel have fully thought that through. We will need to talk to them about that. But this is not an acceptable panel.

Some people say, ''Well, Congress can't undermine contracts.'' We limit the minimum wage. And Florida has limited attorney's fees—at least so far they have tried to. People on the other side say, ''Well, it's not so bad. Florida limited their attorney's fees contracts. So if Florida can limit that contract, why can't we limit their fee?'' But in Texas they did not. In Texas a judge has approved $2.3 billion in attorneys' fees.

I will point this out to you: I have a recent article about the owner of the Baltimore Orioles making over $1 billion from these attorneys' fees, $1 billion—B-I-L-L-I-O-N—$1 billion. I suspect he probably is making more off the lawsuit than he has made on all of his other investments.

Do you know how many billionaires there are in the United States according to Forbes? I had my staff check. There are about 60. I wonder how many new billionaires these attorneys' fees will make? Who will pay for this wealth transfer? Who will be making more Montgomerys with multimillion-dollar mansions on the beach, who hit their golf balls out into the water because they have so many they don't care, and have world-renowned painting collections?

I am not weeping at all over the poor state of these attorneys. I think it is time for us to have a clear policy about what we ought to pay. This body voted last year that $250 was a fair wage for them to be paid per hour, and I think it is, too. I support this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. How much time do I have left?

The PRESIDING OFFICER. The proponents have 58 minutes 30 seconds.

Mr. SESSIONS. The 15 minutes?

The PRESIDING OFFICER. The 15 minutes have expired.

Who yields time?

Mr. KERRY. I presume the Senator can yield himself more time if he wants to.

Mr. SESSIONS. I will reserve the time on this side.

The PRESIDING OFFICER. Who yields time?

Mr. KERRY. Mr. President, I yield myself such time as I use. I will not use that much time.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, it is time we really talked about what is really happening here. And it is time that we face reality with respect to this amendment.

I am just astounded listening to the Senator from North Carolina and the Senator from Alabama suggest they know better than their own attorneys general, who are elected, after all, who are accountable to the people of their States, just as we are as Senators, and who suddenly, representing the Republican Party, are attacking people because they have made some money and they do not like the way they have made some money.

This is an unprecedented situation as far as I know. The Senator from Utah, the distinguished chairman of the Judiciary Committee, could not have put it more strongly or directly. He asked the question, What is our party coming to if this is what we stand for?

Now, I ask my colleagues just to read this amendment. This amendment says:

> No award of attorneys' fees under any action to which this Act applies shall be made * * * until * * * [they] have provided to the Congress a detailed time accounting with respect to the work performed.

They want to turn the U.S. Congress into an accounting committee for attorneys, private attorneys who have contracted privately with the attorneys general of their States.

But after that, if ever there was a violation of what I thought the Republican Party stood for, here it is. ''This section shall apply to fees paid or to be paid to attorneys under any arrangement * * *'' i.e., retroactively. They are going to go back and say, no matter how many hours attorneys may have worked, no matter how much their firm may have put in, they are going to have to live by a certain fee that may be well below what they have already invested in a case.

But even more importantly, they do this for any attorney ''who acted on behalf of a State or a political subdivision of a State in connection with any past litigation,'' ''who acted on behalf of a State or [any] political subdivision of a State in connection with any future litigation,'' ''who acted at some future time on behalf of a State or a political subdivision of a State in connection with any past litigation,'' ''who act at some future time on behalf of a State or a political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies * * *''

Here is the most extraordinary long-arm reach of the Federal Government into the affairs of States from the very people who are most consistently on the floor of the U.S. Senate saying, ''Keep the Federal Government out of our business. Keep the Federal Government away from intruding. Don't put mandates on the State. Don't preempt State action.'' And here we are with the greatest single preemption, intrusion, and nit-picking, micromanaging that I have ever seen.

That said, they are not even dealing with reality, Mr. President. They are coming in here and talking about $180,000 fees. That is not what they got in Florida. In point of fact, that is what the attorneys may have asked for because that was their agreement, but that is not—they are subject to arbitration.

Every single State is subject to arbitration. This bill honors the notion that there will be arbitration. No one expects attorneys to be paid the kind of money that is being thrown around on the floor of the U.S. Senate. That is not going to happen. And they cannot point to an instance where it actually has happened.

In Minnesota, they settled for 7.5 percent. The Attorney General settled, all of the parties settled. And what is really fascinating is my friend from Alabama says there are not two pots of money. Well, that is not true. In Minnesota there are two pots of money, because they came to an agreement that one pot would pay the people what they get by virtue of a settlement, and the companies, the tobacco companies will wind up paying the attorney fees outside of it. That can happen in each and every other State subject to the determination of the arbitration process, subject to the courts, subject to the attorneys general and others.

Who is the Senator from North Carolina, who is the Senator from Alabama to say that the attorney general of a State does not know what he is doing, that the attorney general of a State is incompetent to decide that he wants to run for reelection based on what he thought was a fair approach to arriving at a settlement?

Why is it fair? It is fair, Mr. President, because no one wanted to take these cases. No one wanted to take these cases. I stand with my friend from South Carolina as somebody who has tried a case and who has taken a contingency case.

When I first got out of school I started a law firm. We did not have the money to carry the case. We did not have anybody supporting us. But about six or seven people who had hairs implanted in their head from rug fibers came to us. It turned out that the hairs were cancer, carcinogenic, and they got extraordinary blisters and reactions to this and spent days in hospitals and being treated.

But how were they going to get redress? Well, they got a couple of young lawyers who took the cases on a contingency. And we took those cases based on the notion that we invested our money in the depositions. We invested our money and the time put into it. And we worked for 2 long years, Mr. President, in order to be able to finally take that case to court, win the case in court, and ultimately force the rest of the cases to settlement. There are countless examples like that.

America is going to have an opportunity to see a movie soon in which John Travolta will play Jan Schlichtmann, a young attorney up in Massachusetts who took a case of people in the City of Woburn, who had been poisoned by toxics put into the well system and their kids were dying of leukemia. This was a case that nobody wanted to take. This was a case that took years to prove, and they brought experts from all over the country. They invested in it themselves to the point, Mr. President, they were floating their own credit cards to the point of bankruptcy. They mortgaged their home to the point of bankruptcy. This lawyer lost his automobile. It was repossessed because he was going to win on behalf of these people. Ultimately, he was able to pay off all the bills and he barely made any money at all.

That is a case you win. Most cases in America are stacked against the plaintiffs. In most cases in America, corporations have all the money. That we have seen from the tobacco industry over the last years. And that is why, as the Senator from South Carolina pointed out, in all the years of litigation, not one single penny has been paid out in the court as a result of a victory won in the court at this point in time.

Who will bring those cases? This isn't the only example of that. There is the most extraordinary misunderstanding in America about contingency fees and what happens for the cases that are won that create a big stir. There are dozens of cases that are lost. There are dozens of cases litigated where people make an effort and they don't win. And that is our system of jurisprudence in America. That is how we provide the average citizen, the person who doesn't have the bucks, access to the courthouse. And here we are with a system that we have worked out in this bill which sets up arbitration which says, in section 1407, that in any case where the State and their litigation counsel failed to agree on attorney fees and related expenses, the matter of attorney fees and extensions shall be submitted to arbitration.

There is no automatic payout in this bill. No attorney walks away with fees that any attorney general or any State thinks are wrong. That is not going to happen. And there are people accountable at the State level if it did happen. It is not the business of the U.S. Senate to step in and suggest that, because the Senator from Alabama finds the lifestyle of a particular individual who may not even have made the money through that case, other cases—finds it onerous, to say we will limit it.

I bet any one of us could find any number of corporate executives, chieftains, in this country who have their airplanes, who have their nice cars, who may or may not choose to hit a golf ball in the ocean. I am sure you could say they have a lifestyle that somehow people find a little bit objectionable or they are jealous of, but since when in this country do we say we will limit their capacity for earnings and step in and become the accounting agency for those kinds of transactions?

I hope my colleagues will measure carefully the capacity in this bill. This would interfere with private contracts. The amendment is not necessary, because a bill has a means of resolving these. The courts have already shown an unwillingness to prevent any unreasonable fee, and these contingency fees preserve the rights of our citizens to be able to have access to the court.

Let me share why that is so important. It was the result of a suit brought on contingency that helped make automatic teller machine operators responsible to put those machines in a way that people weren't attacked or somehow there was a sense of responsibility about the locations. That is one of those victories that you win because people took a case.

Another case, where a $10 million punitive damage award against Playtex removed from the market tampons linked to toxic shock syndrome—those problems had been deliberately overlooked by the company. It was only because of the suit that people were protected.

In St. Louis, a jury returns a $79 million award against Domino's Pizza because of its fast delivery policy. We had a woman, Jean Kinder, who suffered head and spinal injuries when a delivery driver ran a red light and hit her, because the policy was, you have to push delivery. They changed their policy because a lawyer brought that concept to court, and it was rectified.

An 81-year-old died from a fatal kidney ailment after taking an arthritis pain relief drug called Oraflex for about 2 months. The manufacturer had known of the serious problems associated with the drug but failed to warn the doctors, and, in fact, Eli Lilly removed the drug, as a result of that suit, from the world market after it had been available in the United States for less than a year.

Eight punitive damages awards were required before the A.H. Robins Company recalled the Dalkon Shield, the IUD, and we all know what happened with respect to that.

All of these were instances, Mr. President, where American citizens were protected by virtue of the capacity of a lawyer to take a case. I can tell you, if you limit these fees to the level they want, what you are really doing is limiting the access of the average American to the courtroom, because you will make it impossible for lawyers to take those fees under those circumstances—not to mention the unconstitutionality and questionable practice of how you regulate defendants' fees in totally private contractual relationships outside of anything to do with State action, outside of anything to do with a compelling straight interest, with no appropriate rational nexus that the court requires for that kind of test.

This doesn't work. It is not needed. It is wrong. It is an exaggerated problem seeking some kind of solution. This is not the solution.

I reserve the remainder of my time.

Mr. FAIRCLOTH. I yield whatever time is desired to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. I will share a few thoughts as we discuss this thing. I think the feelings are strong on both sides.

I suggest that Federal action is appropriate here because the States have asked for a comprehensive settlement of this matter. The legislation that we have proposed is a comprehensive piece of legislation. It involves where the money goes. We don't agree with the States on everything that they say, and we will be doing things differently in a number of ways. It will represent the consensus of the House and the Senate and the President, if he signs it.

I think it is perfectly appropriate for us to deal with the problem of just how much these litigators make. When you have a young lawyer taking on a big company and winning a contingent fee verdict and making some money off of it—we are not trying to undo that. We are talking about a massive effort, nationwide, that has resulted in incredibly huge profits or windfall attorney fees that ought to be contained by the

very nature of this. We have a right to legislate that.

Whereas at this stage Florida has reduced the attorney's fees that were to be awarded of $2.8 million, one of the lawyers, I think, is still contesting that, and they may not prevail. Or if they do, it is just proof of the fact that courts and legislative bodies have the power to deal with excessive fees in this kind of circumstance.

Finally, they say, well, there is an arbitration panel in this agreement. I must tell you, the configuration of that panel is unacceptable. It is unacceptable for two different reasons, really. It is unacceptable, No. 1, because it doesn't even come into play unless the attorney involved is unavailable to agree with the plaintiff. The plaintiff is the attorney general or, I guess, representing the State, of the people. I am on page 438 of the agreement. It says you can't have arbitration unless the attorney involved—that is, the private plaintiff lawyer—is unable to agree with the plaintiff—that is, the attorney general who employed that attorney—the attorney general, with respect to any dispute that may arise between them regarding their fee agreement.

Why, this is the fox guarding the hen house. These are the same people that agreed to the fees. We don't have a good thing there.

Then, when it talks about submitting it to arbitration, the makeup of the panel shall consist of three persons, one of them chosen by the plaintiff—that is, the attorney general—one of them chosen by the attorney—that is, the plaintiff's attorney—and one of them chosen jointly by the two of them. That is who is making the decision—the same people that got us into this fix. I submit that is not an effective arbitration panel and it is not something that at all deals with the seriousness of the problem.

Lester Brickman, when he was interviewed on ''20/20,'' the professor from Cardozo Law School, made these statements: ''These are politicians involved who are stroking the backs of lawyers because lawyers have stroked their backs before and may yet stroke their backs again. So I think the public perception here, which is probably pretty accurate, is that it smells.''

I want to make one more point. I think this is really important. I can see how that could be of confusion. The Senator from Massachusetts says there really are two pots. This is fundamental when you think about it. It is not two pots. There is one pot of money; that is the tobacco companies; and they will pay it over to get rid of this lawsuit. And they are willing to pay as much to the lawyers to get them to agree to the settlement. It is not a healthy relationship. It is not a healthy relationship. And the suggestion that the tobacco company can go over here to the side and enter into a side deal with the lawyers who are supposed to be representing the State and the people to pay their fee, and that is not going to affect the overall settlement, is not sound thinking. It is the same money, and every dollar they agree to give is one dollar less that goes to the people and victims of smoking.

I believe the present proposal is not effective at all. I object to it. I believe the Senator from North Carolina has a proposal that will fix this matter. It will be a generous fee for these attorneys. They worked on it for 4 years, and they have 10,000 hours. They get paid $250 for every one of those hours. That is perfectly generous.

I yield the floor.

Mr. HOLLINGS. I yield to the distinguished Senator from New Jersey 5 minutes.

Mr. TORRICELLI. Although I have not been in this institution long, I have already discovered one thing about the Senate. Things are not often as they appear. This discussion has been almost entirely about money, what fees are paid, and who pays them.

But in truth, this amendment is not about money, it is about power. It is about whether or not the individual American who has little or no money, cannot afford expert testimony, cannot afford to pay the fees with extensive and complex litigation, can stand in a courtroom face to face with the largest and richest, most powerful corporations in the world and get justice.

Through almost all of the history of this Republic, we have assured that right to every American. But today, this Congress is at a point of judgment about the tobacco industry because those individual lawyers, on contingency fees, representing individual American citizens, have brought us to this point of decision.

Make no mistake about it, Americans are dealing with the reality of health care and tobacco and the financing of our future health care as a result of a potential tobacco settlement, not because of this Congress, not because of the good graces of American industry, not because the leadership of the President, but because of the threat in courts of law that individual attorneys, on contingency fees, have found justice for individual American citizens.

This fight is not about money. There are ample resources in any tobacco settlement. The fees would be paid. It is about whether or not this door to American justice is to be closed. And that is the decision.

The great irony of it is, on the other side of the aisle, the party which has always claimed to represent the rights of the individual, the founding wisdom of our constitutional system, and the prerogatives of individual State governments, would be bringing this amendment at all. If it were to succeed, the Senate of the United States would be setting professional fees, a judgment that not only does not belong here but demeans the institution. The Senate of the United States would be taking prerogatives away from State governments and State attorneys general which have negotiated these decisions or made these judgments.

The McCain legislation deals with this, in what I believe is a proper fashion, in setting arbitration panels where arbitrators can pay what expenses the lawyers had, what they had to pay, the risk they took, the time involved, and then, on a professional, informed basis, decide on proper compensation.

Alternatively, that judgment will be made here, and on what basis? Who here knows the risks involved, what expenses were incurred, what professional judgments were required? Never in my limited experience in this institution would we be making a less informed decision.

Mr. President, I strongly urge the defeat of this amendment. The attorneys general of this country have availed themselves of a right that individual Americans have used for generations. They made a judgment to the taxpayers of this country who could not afford to pay private attorneys the enormous fees, the enormous costs through recent years, to avail themselves of contingency fees to protect the taxpayers just as individual Americans have done for years. Now it is time to ensure that system worked—that freedom to remain with the individual States to reach their own final judgments.

Finally, Mr. President, let me suggest to you this legislation is not only inappropriate for the institution, it is not only denying Americans a power of equal justice against the strong and the powerful, which they have enjoyed for generations, it is also, finally, if nothing else, patently, clearly, unequivocally unconstitutional. On what basis will the Federal Government take this judgment away from the States under the 10th amendment? And on what basis would this Congress decide to take this compensation away from individual Americans in what is clearly an unconstitutional seizure of property without compensation?

Mr. President, this amendment is bad on a variety of bases. Collectively, it is almost unthinkable. I am very pleased that Senator HOLLINGS and Senator KERRY have led us in the debate, and am more than a little proud that the chairman of the Judiciary Committee, on which I am proud to serve, Senator HATCH, once again, as has been his tradition, has come to the floor of this institution in the protection of the prerogative of the institution and the Constitution of the United States.

I thank the Senator from South Carolina for yielding the time.

I yield the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. I do. I yield 15 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 15 minutes.

Mr. McCONNELL. Thank you, Mr. President.

I thank my friend from North Carolina.

The FAIRCLOTH cap is an attempt to insert a bit of sanity into a world of attorney-fee madness. The national tobacco settlement has turned into the ''national lawyer enrichment deal.'' Let me tell you a little about the current ''national lawyer enrichment deal.''

Under the current bill, conservative estimates say that we are about to hand over approximately $4 billion a year to lawyers —$4 billion a year—every year—for at least the next 25 years. This, Mr. President, is absolutely outrageous.

I am sure the friends of the trial bar will stand up and say I am exaggerating. They will say we are stretching this one. Lawyers aren't really asking for that much money, it will be said. They aren't that greedy, some will claim. They just want to be paid a fair wage for a good day's work. Well, let's see if I am exaggerating. Let's see if the trial lawyers just want a fair wage for a good day's work. Let's take a little tour of the ''national lawyer enrichment deal.''

In Minnesota, where a few lawyers are reportedly seeking to rake in approximately $450 million, the lawyers in Minnesota actually took the case to trial, so it is reasonable to assume that they employed more attorneys and put in more hours than some lawyers in other States. So let's assume that 50 lawyers worked a total of 100,000 hours. These 50 lawyers would each take home $9 million for his or her labor—$9 million. And what is the hourly fee for the hard-working plaintiffs' lawyers in Minnesota? It is $4,500 an hour, Mr. President, $4,500 an hour for the plaintiffs' lawyers in Minnesota.

Well, let's take a look at Mississippi. We will stop off in Mississippi on our national tour. The latest reports out of Mississippi are that the lawyers are seeking $250 million. Assuming that 25 lawyers worked on these cases for 25,000 hours, the Congress would be authorizing each lawyer to receive $10 million a piece.

Let's break that down on an hourly basis. If each of these lawyers worked 1,000 hours exclusively on the tobacco litigation, that would enable them to earn $10,000 an hour. Pretty good day's pay, I would say—$10,000 an hour.

Now let's stop off in Florida, and this is better than Disney World. A handful of trial lawyers in Florida are trying to take us for a ride, the ride of our lives. These fellows are looking to receive as much as $2.8 billion. One lawyer has already sued for his $750 million share of the pot. And we don't even have to make assumptions in Florida because the judge has already done the math for us. The judge looked at the greedy grab by the lawyers and concluded that the demands for attorneys' fees—and this is quoting the judge—''Simply shock[ed] the conscience of the court.'' The judge concluded that even if the lawyers worked 24 hours a day, 7 days a week, including holidays, for over 3 years, they would earn over $7,000 an hour—$7,000 an hour. In fact, we know the actual hourly rate for the Florida attorneys is immensely higher because no one can seriously contend that any lawyer, much less every lawyer, worked 24 hours a day, 7 days a week, on tobacco litigation for 3½ years.

But it gets better. The final stop on our lawyer enrichment tour is Texas. There a handful of lawyers are going after $2.2 billion. Well, let's see what kind of hourly fee the lawyers want in Texas. Texas did not go to trial so it is reasonable to assume Texas put in far less time than Minnesota.

Again, assuming that 25 lawyers worked a total of 25,000 hours, then each of these lawyers could earn $88 million. And what kind of hourly fee is that for our Texas trial lawyers? That is $88,000 an hour—$88,000 an hour for the plaintiffs' lawyers in Texas. And if that is not outrageous enough, the $2.2 billion for attorneys in Texas have to be paid out of the Medicare money. So who do we pay, the sick and the elderly or the greedy and the lawyerly?

Let's compare the tobacco trial lawyers to the rest of the world. Let's see how $88,000 an hour compares to the average wage of others in our booming national economy.

First, we know that minimum wage mandates that workers be paid $5.15 an hour. We certainly know that the tobacco trial lawyers are making a heck of a lot more than the minimum wage earner. Senator KENNEDY will have to pass an awful lot of minimum wage hikes this year to keep up with the plaintiffs' lawyers. In fact, we are going to authorize the trial lawyers to earn nearly 50 times the minimum wage under the Faircloth amendment.

Simply put, the tobacco trial lawyer is also making a heck of a lot more money than every other wage earner in our country—everybody. As Senator FAIRCLOTH has pointed out, the baker earns $7.65 an hour; the barber, $8.37 an hour; the auto mechanic, $12.35 an hour; the carpenter, $13.03 an hour; the police officer, $16.65 an hour; the pharmacist, $25.98 an hour; all the rest of the lawyers, $48.07 an hour; and the doctors, $96.15 an hour. That is what everybody else is making. The Faircloth cap would bring the trail lawyers' stake back to the edge of reason. The cap would allow lawyers to recover their costs as well as a reasonable hourly rate as high as $250 an hour.

I might say even the $250-an-hour rate sort of makes me cringe. I suspect if the Senator from North Carolina had his way about it, it would be lower than that. But that is what the amendment states.

I know that amount is not exactly $88,000 an hour. I would not argue that $250 an hour is as good as $88,000 an hour. But it is not exactly chicken feed, and it is way the heck more than anybody else in America is making on an hourly basis. I would say there are a lot of us in the Senate who would like to have that kind of take-home pay. I know there are a lot of folks in America who would be more than happy for $250 an hour.

This cap is extremely generous and eminently reasonable. In fact, the Federal Government has established numerous attorney fee caps over the years that prove the point. Under the Equal Access to Justice Act, the fee cap is $125 an hour; under the Criminal Justice Act, $75 an hour; under the Internal Revenue Code, $110 an hour.

We ought to pass the Faircloth cap. It is fair and it is constitutional. A sweeping Federal regulatory bill cannot leave out the matter of lawyers' fees, especially when omitting the issue would allow for such abuse.

Let me spell this out.

The tobacco bill is an all-encompassing Federal regulatory scheme. The scheme will expand the Federal jurisdiction over tobacco products, regulate the manufacture, advertising, and sale of tobacco products, fundamentally affect and alter past, present, and future litigation over tobacco products, and facilitate the implementation of the settlement reached between 40-some-odd States and the cigarette manufacturers.

It would defy all logic and reason to pass this type of sweeping Federal regulation without including some type of minimal regulation for the payment of attorneys' fees for civil actions affected by the bill. Basic fairness requires that we not neglect this critical issue.

Throughout the debate over the tobacco settlement, we have constantly heard assertions that the tobacco companies have gone after women, children, and the elderly. If we don't pass this sensible fee cap, then we will not only be creating an exclusive club of trial lawyer billionaires—that is with a ''b,'' Mr. President, billionaires—but we will be unleashing a legion of lawyers to prey upon these very same persons in future tobacco cases affected by this bill. Surely, nobody in the Senate would want such a result.

No one is trying to deny any lawyer a fair wage. Surely, $250 an hour, which is in the Faircloth amendment, is more than a fair wage by the standard of anybody else living in our country.

A vote for the Faircloth amendment is a vote for reason and sanity. Let's stop the National Lawyer Enrichment Tour before it starts.

Mr. President, just a couple of other observations that I would like to make before relinquishing the floor.

Neither the Contracts Clause nor the Due Process clause prohibit regulation of attorney fees as part of a broad, comprehensive regulatory bill.

The Court has pointed out that a ''party complaining of unconstitutionality . . . must overcome a presumption of constitutionality and 'establish that the legislature acted in an arbitrary and irrational way.'''

It is neither arbitrary nor irrational to regulate attorney fees as part of a

comprehensive federal effort to expand federal jurisdiction over tobacco products, regulate the manufacture, advertising and sale of tobacco products, fundamentally affect and alter past, present, and future litigation over tobacco products, and facilitate the implementation of the settlement reached between forty-some-odd states and cigarette manufacturers. In fact, it would defy all logic and reason to pass this type of sweeping federal regulation without including some type of minimal regulation for the payment of attorney fees for civil actions affected by this bill.

Even CRS—when looking at a standalone fee cap last October—determined that ''it seems very likely that the proposal in question would not violate due process.''

Federal courts have routinely upheld laws that abrogate past contracts, so long as those laws have a rational basis. It is certainly a rational basis to regulate fees as part of a broad regulatory package. Moreover, it is rational to ensure that an equitable amount of finite resources will be available to protect the national public health and welfare and to compensate those who suffer from tobacco-related diseases.

In fact, the Supreme Court has declared that ''Congress may set minimum wages, control prices, or create causes of action that did not previously exist.''

In one classic Supreme Court case, the Court held that Congress could retroactively cancel a ''free rail pass for life'' given as part of a settlement of litigation. Moreover, to accept the trial lawyers' takings argument, one would also have to consider it a constitutional violation for Congress to require States to abrogate contracts with state employees in order to increase the minimum wage.

Professor Brickman has explained that ''[i]f individual parties could insulate themselves from congressional legislation by entering into private contracts before such legislation were enacted, then:

the result would be that individuals and corporations could, by contracts between themselves, in anticipation of legislation, render of no avail the exercise by Congress, to the full extent authorized by the Constitution, of its power to regulate commerce. No power of Congress can be thus restricted. The mischiefs that would result from a different interpretation of the Constitution will be readily perceived.

Finally, the ''constitutionality of the amendment under a Taking Clause analysis is further buttressed by the fact that attorneys affected by the regulation are receiving substantial financial benefits from [the Tobacco Bill].'' (Brickman Letter at 2.) These *substantial benefits for attorneys,* financial and otherwise, include the fact that the federal government is: (1) ratifying the national tobacco settlement, (2) establishing a national trust fund to provide States with Medicaid reimbursements and attorneys with a basis for recovery, (3) removing limits on tort liability in future cases, (4) making it easier for plaintiffs to recover by changing the burden of proof and establishing a presumption that certain diseases are caused by use of tobacco products, and (5) creating a national public database with incriminating documents to use against tobacco companies in present and future litigation.

No court would view these substantial benefits for plaintiffs' attorneys and conclude that they have suffered an unconstitutional taking. Even the CRS document referenced by the opponents of this amendment clearly spells out that ''indeed, the Supreme Court has never found a taking based on federal legislative alteration of existing private contracts.''

Mr. President, I commend the distinguished Senator from North Carolina for an outstanding and important amendment. There should be no tobacco bill at all—at all—unless this unjust enrichment of this select group of lawyers is curbed. The Faircloth amendment would do that. I commend the distinguished Senator from North Carolina for his good work, and I am happy to be a cosponsor of his amendment, and I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). Who yields time?

Mr. HOLLINGS. I yield 5 minutes to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. WELLSTONE. I thank Senator HOLLINGS.

Mr. President, here we go again. Now we find out that this bill covers not only prospective actions but it also has been expanded to cover, and thereby affect, four State settlements that have already been finalized in Mississippi, Florida, Texas, and Minnesota.

We have been through this before in Minnesota. The tobacco industry challenged the State entering into a contingent fee with attorneys. They took this challenge to the trial court, to appellate court, and the Minnesota Supreme Court, and they lost every time. This amendment is another tobacco company amendment, and I believe they will lose again on the floor of the U.S. Senate.

Mr. President, I have to respond to some of what I have heard my colleagues on the other side say about how these attorneys have done so little. That is a bitter irony, from the point of view of a Senator from the State of Minnesota. Minnesota, for instance, from August 1994, when the case commenced, until January 1998—we had numerous, unprecedented pretrial and discovery proceedings. Over 34 million pages of documents were reviewed. The majority of them had never been disclosed. The tobacco companies fought this over and over and over again on privilege claims. They lost.

And the irony, I say to my colleague from South Carolina, is that much of what we know about all of the tobacco companies' tactics of misinformation and deceit come from those documents—from the State of Minnesota, from that case, from that settlement. It has a lot to do with the fact that people in the country want us to pass tough legislation. It has a lot to do with the fact that Minnesota led the way.

What we are really talking about here is something very historic. These States went on a contingent fee basis with lawyers, took on the tobacco companies, and these settlements were historic because these were the first time that this tobacco industry had ever lost in court. Despite the long odds, Attorney General Humphrey and other attorneys general took on the industry, went with contingent fee, and the tobacco industry tried to stop it. They lost in Minnesota. And because of this work, with 34 million documents, additional information, a record of deceit and misinformation by this industry—that is what this debate is all about.

This is not about anything other than making sure that when consumers want to take on a powerful industry like the tobacco industry, or the State of Minnesota wants to take on a powerful industry like the tobacco industry, they won't be able to do so. As a matter of fundamental fairness, this amendment should be defeated. I just have to simply say, I don't know where my colleague from Kentucky gets all of his arithmetic from—I am talking about Senator MCCONNELL from Kentucky——

Mr. FORD. Thank you. Thank you.

Mr. WELLSTONE. Not Senator FORD—dividing up how many lawyers worked on this and how much they got paid and all the rest of it. I never heard any of that before.

Here is what I do know. It is true the State of Minnesota took on this industry. It is true the tobacco industry, just like some of my colleagues, don't want that to happen. It is true they challenged the contingency fee, just like my colleagues are trying to do here today on the floor of the Senate. But the tobacco industry lost in Minnesota in a case that went to the Supreme Court. Minnesota, working with lawyers and working with consumers, unearthed—what is it again; let me make sure I have the exact figure—34 million pages of documents.

Mr. President, this amendment should be defeated. If it is adopted, it would be great for the tobacco industry, but it would not be great for the consumers and people we represent, and I think Minnesota is living proof of that.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. WELLSTONE. Will my colleague be kind enough to give me 10 seconds?

Mr. HOLLINGS. I yield 3 or 4 more minutes.

Mr. WELLSTONE. I thank my colleague. I won't need that much time.

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. Mr. President, I ask unanimous consent that Joe Goodwin, who is an intern, be allowed the privilege of the floor for the duration of this debate.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. FAIRCLOTH. Mr. President, I yield myself 3 minutes.

We have had a lot of conversation today about limiting attorneys' fees, that this would be a new thing, that the Federal Government should never get into limiting the fees that these magnificent saviors of society, the trial lawyers, have done for us.

We limit attorneys' fees to every other attorney under the Equal Access to Justice Act. We limit to $125 attorney fees against the Federal Government in civil rights cases. Now, maybe they are less important than the tobacco case, but they only get $125 an hour.

The Criminal Justice Act has a cap in most criminal cases of $75 an hour, and the Internal Revenue Code limits to $110 an hour a cap for winning parties in tax cases. And here we are talking about $88,000 an hour in Texas, and this is a fixed, done deal. This is not a guess—$88,000 an hour.

I just had to think what that meant. A trial lawyer makes more in an hour and a half than a U.S. Senator makes in a year. Now, maybe he is worth more, according to the testimony we have heard, but in an hour and a half, a Texas trial lawyer makes almost exactly the same amount of money that we pay a U.S. Senator for a full year's work. And they are saying, ''No, you cannot cap these great people, they have saved society.'' Time after time we hear what they have done to save mankind. Well, I don't think they are saving mankind. They are saving their own kind, and that is exactly what they are working on.

We go back to what they are worth. I don't see how anybody can justify this. They say we are setting fees. We set fees on doctors of all types—anesthesiologists. For all doctors, we set fees. We set hospital rates. We set lawyer's fees. But yet, when it comes to these exorbitant, ridiculous fees that the American taxpayers are paying—and I repeat that 70 percent of this tax that is being collected and given to these attorneys is coming from people making less than $40,000 a year. Extrapolated, that is about 26 minutes' work for a Texas trial lawyer.

The PRESIDING OFFICER. The Senator has used the 3 minutes he has yielded himself.

Mr. FAIRCLOTH. I thank the Chair. Does Senator SESSIONS wish to speak?

Mr. FORD. Mr. President, are we swapping sides now?

Mr. HOLLINGS. I yield such time as necessary to the distinguished Senator from Kentucky.

The PRESIDING OFFICER. The Senator from South Carolina has less than 15 minutes.

Mr. FORD. About 4 minutes.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. I thank the Chair, and I thank my friend from South Carolina. I am not a lawyer, and I don't understand all the work that lawyers do. When I was growing up, my dad said a little knowledge of the law is dangerous. Get yourself a good lawyer and stay with him or her. That is what I have tried to do.

I have been in the insurance business, and I understand that very well. How many times has an independent agent down in some small community—and I have done it on many occasions—been asked to make bids on a piece of property or on a fleet of trucks or liability, or whatever it might be, and the staff in that little agency work for hours, day and night, putting together a comprehensive bid. Lo and behold, we lose. That is part of the game.

Then we get another bid. It may be on a county or on a city, and we work for days and into the nights putting together a comprehensive bid. And we lose.

But lo and behold, one time we submit a comprehensive bid and what happens? We win. It makes us feel good. But then somebody comes along and says, ''Ford, you've made too much money.'' Well, I have lost 100 times and finally win one and they say, ''Ford, you've made too much money, you just can't do that.'' So they limit the amount of money I can make as an insurance agent.

It is the same thing that happened yesterday. Ninety-eight percent of the farmers who have tobacco quotas voted to keep the farm program. But in here, on the Senate floor yesterday afternoon, they said that 98 percent didn't know what they were talking about—''We're going to wipe out the quotas because we know more than you do.'' That is why they don't like politicians in Washington. They don't want to do what their constituents want them to do.

Here we are saying after 98 percent of the people voted one way, ''You don't know what you want, and we're going to take care of you.'' It is the same way with the attorneys general. Over 40 of them took on the tobacco industry. It was a pretty awesome cause, and they have won. They worked out a deal.

Now we say, ''After you have done all that, you can't charge that much.'' You sign a contingency fee. What is a contract for? Are we the ''big brothers'' that vitiate contracts? I don't think so. You talk about protecting little fellows. As I understand the tobacco deal, it came from a little fellow whose secretary lost her mother, and he figured out that the States could sue. A little fellow made it, and he came along and others joined with him.

We are now saying to these 40-some-odd attorneys general, ''You don't know what you're doing, you paid too much.'' We weren't even in on it. We didn't even help. But now in the end, we say, ''No, you can't have that, that's too much.''

They took the chance. How much did it cost? How much did they pay? Everything they have paid comes out of this hourly cap. I am sure that some lawyers do better than others. Lord, when I was in the insurance business, I would have loved to have had a boat. I had a johnboat I fished in, and I was proud of it. I had a decent automobile—I didn't have a jet to fly around in—but I was proud of it. I made it by being competitive. I went to the people who had an opportunity to give me a chance, and I asked them, ''Can I bid?'' We worked it that way.

The PRESIDING OFFICER. The 4 minutes yielded has expired.

Mr. FORD. I ask for 1 more minute.

Now we are saying you can't just do it. If there ever was an intrusion in private practice, private business—I am surprised at the Republican side. Ninety-eight percent of the farmers say we want it one way, and they say, ''You can't have it because you don't know what you're talking about.''

Lawyers go out and win a case, and they say, ''You've got too much by winning, we're going to take it away from you.''

I don't understand what this body is trying to do. I don't want you to take anything out of my pocket, but that is the name of the game, as I see it, and when you win, you win; when you lose, you lose. When you lose, you pay it all. When you win, you get to pay off what it cost you. You don't put all that in your pocket.

So I go back to the insurance business. We spent hours and hours trying to be competitive and win one. But we did not win them all. We lost a lot of them. But when we did win one, I would not want somebody coming along saying, ''You have made too much.''

It is like gambling. You have to pay—they had an amendment around here saying, ''If you win, you have to pay tax on it; but if you lose, you can't deduct it.''

Oh, we are doing pretty good around here, Mr. President. I hope that someday we can come down and have a little common sense and we can try to work this to the advantage of everybody in this country under the basis that we are competitive. It is a free system. And if you come out ahead, Lord, let's don't say, ''You made too much.'' Let us praise them for being good. The prize is being good. You made it work.

So we are saying, ''If you are good, you are going to be handicapped.'' That sounds like a horse race to me. I come from Kentucky. We race thoroughbreds. If you have one that is way out front, you better put 126 pounds on him. If you have one that is light, you put 112 or 114.

So that is what we are trying to do here. If you are a thoroughbred doing a

good job, we are trying to handicap you from running a race.

Well, Mr. President, I hope this amendment is not approved. I hope my friend from South Carolina wins on this one. Then we can get on to other things and help the farmers that have a tobacco quota. Let them win a little something in the days to come.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I would like to make a——

The PRESIDING OFFICER. Does the Senator from Alabama ask unanimous consent to use time from the Senator from North Carolina?

Mr. SESSIONS. I did not hear the President.

The PRESIDING OFFICER. The Senator from North Carolina controls time.

Does the Senator ask unanimous consent that he be allowed the use that time?

Mr. SESSIONS. Yes. I ask unanimous consent that I be allowed to use time from the Senator from North Carolina.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I would like to mention a few things.

First of all, attorneys' fees do affect the settlement because it is money otherwise available to be paid by the tobacco companies that could be used for health of the children and the good things this bill seeks to do, for that money is directly usable for good things, and it ought not to be given away in unprecedented windfalls for attorneys, many of whom did little work.

I know the distinguished Senator from Minnesota said that his lawyers did a lot of work. And I think that is probably true. Perhaps the Minnesota attorneys have done more work than any other group of attorneys in the country. And they were paid, I believe, $450 million. That is not $2.8 billion. That is 5, 10 times what they made. So they did a lot of work in Minnesota, and they are going to get fees far less than this settlement would call for.

People say we should not mess with the contracts. But the other arguments from the people opposing the Faircloth amendment are: Don't worry about it. Florida reduced their fees. Although Texas hasn't yet, they may yet. And there are arbitration policies to reduce fees.

So they are already admitting it is appropriate to reduce these fees. And as was noted, we contain fees for doctors and lawyers and every other kind of litigation—on many other kinds of litigation in the country. And we are comprehensively dealing with a health problem that is significant.

Now, we are here setting about to pass legislation to control abuses by tobacco. And I submit we can control abuses by attorneys.

Let me make one more important point. With regard to this litigation, States have the right to opt out. They are not required to be bound by this and, therefore, the 10th amendment, in my opinion, would not be implicated. They could opt out and not be bound by this agreement.

But they have sought our legislation to comprehensively deal with this in a fair way. And that would call upon us, I submit, to contain the abuses of the attorneys fees.

Mr. President, I conclude my remarks at this time and recognize Senator ENZI from Wyoming, who I understand wishes to make remarks, unless our time has expired and you want to go back to your side, which you should be entitled to.

Mr. HOLLINGS. We only have about 7 minutes left. So you have a half-hour or more.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Does the Senator from Wyoming ask unanimous consent to take time from the Senator from North Carolina?

Mr. ENZI. I ask unanimous consent.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. Thank you, Mr. President. And I say thank you to the Senator from North Carolina.

Mr. President, I do rise to support the amendment numbered 2421 which is offered by the Senator from North Carolina, Senator FAIRCLOTH. I am very much in support of this amendment. And part of it is as a protection to the attorneys. I know they are very sensitive to the kind of reputation they get in a lot of instances, and this is one of those ''save the reputation of the lawyers'' amendments. I am sure a lot of people out there are not used to making $88,000 an hour, and as a result they are probably a little upset with the attorneys who might get that in some of these tobacco cases.

One of the things that people are seeing in this country is a new lottery. And this new lottery is one that requires you have an attorney to scratch your card for you. The tobacco situation is probably one of the new easy targets. In fact, I am predicting that the courts are soon going to be clogged with lawsuits, and part of that is because there are attorneys out there who can see this as a retirement bill as well as an easy target. It has been adjudicated, it has been worked, and it is easy to see that the tobacco companies have been hiding documents and doing a number of other things.

Along with these remarks, I want to state I am probably one of the few who has not received any money from the tobacco lobby. I have been very concerned about these issues. I grew up in a house where both of my parents smoked, and my dad paid probably the ultimate price for that, even though he quit before he passed away.

The amendment would only require lawyers to provide an accounting of their legal work to the Congress in relation to the legal actions that are covered by the underlying bill, including any fee arrangements entered into, and it would limit the payments of attorneys' fees to $250 an hour. That is not $250 an hour total for the firm; that is for the lawyers that are involved in this, and there may be more than one lawyer involved in it. So it isn't a complete limitation.

I have heard some comments that this may just be the start of limiting other kinds of occupations. Perhaps it is, and perhaps it ought to be. Again, I think the people would be appalled to find out that people might make up to $88,000 an hour. And that might not even be the highest case in it.

I do have to give some reference to the accountants who were mentioned. In accounting ethics, the amount that you charge cannot be based on what you find or the amount that you are working with. It is based on hours worked. We already have that kind of a limitation.

I don't know of any other occupation where you get to find a pot of money and then, without being injured or damaged in the case, be able to share in that pot of money. Usually you have to have some separate arrangement for it, some kind of a limitation. Part of that is to discourage greed.

What is happening with the tobacco bill is that there are some wealthy and connected trial lawyers that are lining their pockets from the settlement supposedly made on behalf of the American public. This bill would impose one of the most regressive taxes in American history with outrageous legal fees charged by insider lawyers, some of whom become billionaires as a result of their reputation for the States and class actions.

A document here mentions that the attorney general of Mississippi, Mike Moore, got to pick the No. 1 campaign contributor, Richard Scruggs, who received $2.4 million in fees for the State's asbestos litigation. Then he got to lead the Medicaid recovery suit.

Minnesota lawyers might want to know why Attorney General Humphrey chose Robins, Kaplan, with a 25 percent fee arrangement when Texas, Illinois, Indiana, and West Virginia all had lower percentages than that. They were the ones that had to do the harder work, the initial action.

The Wall Street Journal reported last fall that four lawyers who helped to settle Florida's billion-dollar windfall were now demanding 25 percent of the settlement, or $1.4 billion. Florida Attorney General Bob Butterworth has called that enough to choke a horse.

In Texas, Governor Bush has filed a legal challenge to the $2.3 billion contingency fee, part of the recent Texas settlement. He did that in the interests of the taxpayers who may end up paying for that.

This is not a defense of tobacco or the executives who run the industry. It is quite the opposite. In fact, I am getting a lot of comments from folks in my State. One lady said, ''Let's see now, the tobacco companies have been

abusing my body for all of these years while I have been smoking, and now you are going to punish them, and the way you are going to punish them is to tax me?''

They are figuring that out all over this country. It isn't the companies that are going to be paying the tab. In these lawsuits, it isn't the companies that are going to be paying the tab on that either. Sometimes it is the taxpayers.

In a lot of these lawsuits, it comes directly out of the amount of money that the individuals might have gotten. They don't have control over how much those lawsuits are going to be. If that amount of money holds for the State of Texas, those attorneys will earn $88,000 per hour for their legal representation. The American taxpayers are going to be left holding the tab for a number of outrageous fees.

I think it is proper for us, again, in defense of the legal institution, to limit those fees so people aren't seeing these as a lottery for attorneys where everybody else gets the pain and the attorneys get the dollars.

I ask that you support the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, I yield 4 minutes to the distinguished Senator from Tennessee.

Mr. THOMPSON. Thank you, Mr. President.

Mr. President, I rise in opposition to this amendment, not because I favor the underlying bill. I do not favor the underlying bill.

I want to specifically address this amendment and what is going on with regard to this amendment. We need to get back to the basic question of what we are all doing here, why we came here, and what we ought to be doing as U.S. Senators. We who pretend to call ourselves conservatives ought to really ask the question, whether or not we want to get into lawsuits that have already been decided pursuant to contracts that have already been executed between private practitioners of the law and sovereign States, and to go in and say that we are going to abrogate what you have done to private citizens agreeing to cases that have already been decided and say we will undo all of that. We, the Federal Government, we, the U.S. Senate, are going to get right into the middle of that and we are going to require you to send billing records to the Judiciary Committee that I sit on.

I did not come to the U.S. Senate to review billing records from lawyers in private lawsuits.

Now, we need to get away from deciding who the good guys are and the bad guys are and just jumping on the bad guys. Nobody likes trial lawyers. You heard a defense already about how great contingent fees are and they are necessary, and all that is true, and so forth. It is beside the point with regard to this. The point is really us. This particular amendment has nothing to do with the tobacco deal. This applies whether or not a company is making a deal with the government or not. It applies to Federal lawsuits. It applies to State lawsuits. This has nothing to do with the tax money we are going to be raising if this bill passes, which I will oppose. It is dipping into a completely different area that has nothing to do with the tobacco legislation because we feel like trial lawyers are getting fees that are too great.

Mr. President, I don't care what the trial lawyers get, if it is something that is agreed to by the parties and is something that is supervised by the courts. It has been pointed out that in one case in Florida the courts found that the fee was outrageous. That is the very point. If a court determines that a fee is outrageous, they can set it aside. It is regulated by the courts. It is regulated by the States. Every State in this Union regulates attorneys' fees. If it is outrageous, if it is not justified, people can take a claim to the States.

Should the Federal Government and should we on our side of the aisle, of all people, be urging the Federal Government to get into the middle of private lawsuits and deciding what fees ought to be in cases where there is a Federal court or a State court that has already decided, and has nothing to do with Federal legislation otherwise? I think that is tremendously bad policy.

I think this whole tobacco approach, quite frankly, is bad policy. I think this idea of taxing waitresses and cab drivers in order to give these same lawyers attorneys' fees of any kind is a bad idea. But the tobacco companies are bad guys, the trial lawyers are bad guys, and we are forgetting the principles that we came up here and are supposed to be supporting; that is, let the Federal Government do what they are supposed to be doing, let individuals have individual responsibility, let sovereign States make the laws, if they want to, and let private litigants go to court and fight it out before a jury of their peers.

Therefore, I oppose the amendment.

I thank the Chair.

Mr. GORTON. Mr. President, I approve the Faircloth amendment that seeks to limit attorneys fees in tobacco cases to $250 an hour. In addition to being impracticable—it makes the United States Congress bookkeepers charged with tabulating every lawyer hour in tobacco cases—the amendment simply is unfair. While $250 per hour may be just compensation in some cases, I do not agree that this arbitrary cap is appropriate in all instances.

Attorneys who took tremendous risks and initiated cases on novel theories deserve, I believe, to be compensated for more than those who filed the just-add-water complaints. Even late-coming attorneys in these groundbreaking cases deserve to be paid at least as much as the tobacco company lawyers. This amendment would not allow this, however, because, while the plaintiff lawyers who have not yet been paid would be subject to the cap, many tobacco company lawyers have already been paid an hourly rate that is significantly higher than $250 per hour.

While I strongly disagree with this one-size-fits-all approach, I share Senator FAIRCLOTH's concern with excessive attorneys fees. I suggest, however, that there are other methods and other limits that are far less burdensome on Congress, and will provide a more equitable outcome. I urge my colleagues to join me in opposing this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. I yield 15 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator has just under 20 minutes. Does he yield 15 minutes?

Mr. FAIRCLOTH. I yield 10 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me first say that I always enjoy hearing our colleague from Tennessee speak. I find myself agreeing with everything he said. But it really has no application to the bill which is before the Senate and the amendment which is submitted to that bill. I agree with the Senator from Tennessee. We ought not to be involved in these things. But that is what has brought us to the floor of the Senate today because we are involved in that. We are getting ready, as he said—his words are better than any words I could come up with—we are getting ready to tax waitresses and taxi drivers to collect $500 billion to $700 billion, which will be used, among other things, to pay lawyers.

So to lament that we are in this debate, I think, is something that I agree with but it is not relevant to the debate that is before us, which I want to be engaged in.

I spoke at some length this morning, so I don't need to repeat a speech I have already given. But, in watching this debate unfold, there are several issues that have been raised that I want to answer.

The first issue is we should not be setting fees. I want to ask the Senator from North Carolina a couple of questions, if I could have his attention. Are we not setting the equivalent of excise taxes to be paid by blue-collar workers all over America in this bill?

Mr. FAIRCLOTH. Absolutely we are.

Mr. GRAMM. Are we, in this bill, not setting out in detail, in fact in 753 pages of detail, how we are going to spend every penny of this $500 billion to $700 billion?

Mr. FAIRCLOTH. We have detailed every dime of the expenditure, and now we have opposition to detailing the attorney fees.

Mr. GRAMM. Mr. President, the point I make is that we have set out in detail how we are going to take $500 billion to $700 billion out of the pockets of blue-collar workers.

Let me remind my colleagues that 73 percent of this money will be collected

from people and families who earn less than $50,000 a year, and people who make less than $10,000 a year will see their Federal taxes rise by 41 percent as a result of this cigarette tax. That is set out in detail in the 753 pages of this bill. The 753 pages of this bill set out in detail how we are going to undertake the largest expenditure of taxpayer money since we initiated in the Great Society the year Lyndon Johnson became President, and each and every part is set out in here.

My answer to the question is we shouldn't. We shouldn't be setting these fees. The assertion is we are setting everything else. We are setting an excise tax equivalent. We are setting the expenditure in minute detail for everything else. The legal fees will arise from this settlement, which will be adopted by Congress and signed by the President.

So, if we are doing all of those things, why shouldn't we set fees? Obviously, we should.

Mr. FAIRCLOTH. Will the Senator from Texas yield for a question?

Mr. GRAMM. I would be happy to yield.

Mr. FAIRCLOTH. There is great conversation that we are going into these attorney settlements with tobacco companies; that that is wrong; that we shouldn't do that; we are interfering in a private contract. Yet, we are telling the tobacco companies, without any question, cancel your contracts in advertising, whether it is television, billboards, newspapers, racetracks. All those you cancel. You go back and retroactively do it. And because we are trying to set caps on attorneys' fees, they say we are interfering in the private sector. What is the other part of the bill?

Mr. GRAMM. I would say the argument is even stronger than that. The whole purpose of this 753 pages is to abrogate all of those court settlements. The whole purpose of this bill, the whole purpose of this 753 pages, is to interfere with each and every one of those court decisions. That is the whole purpose.

So if we are going to set out how we are going to collect the money, if we are going to set out how we are going to spend the money, should we not set out how we are going to spend the money that relates to the portion of the settlement that will go to attorneys' fees?

The second statement is we are abrogating contracts. Do we not have in this bill an arbitration panel that is supposed to set these legal fees? The answer is yes. We do. In fact, this bill sets out in some detail an arbitration panel that is going to set legal fees.

So the argument that by setting out in law what the maximum legal fee is we are abrogating the contract, that is a house we passed 15 miles down the road in this bill, because this bill sets up an arbitration panel to set the fees.

All the Senator from North Carolina is doing is saying, having decided that we are going to have fees set, let's let Members of the Senate stand up and cast a vote on this issue. Let's not hide behind some arbitration panel, which will be made up exclusively, I assume, of lawyers to make this decision.

What is really the issue here? The issue here boils down to this: We understand that when we are looking at a payment, which has been estimated—and I think correctly—at roughly $4 billion to attorneys, given the billing records on the cases that have been tried, that comes—there are about 45,454 hours—what this really comes down to is about $88,000 an hour as a potential payment.

Does anybody believe we would pass an appropriation bill paying some $88,000 an hour? Well, maybe some believe it. Maybe we would. But I think that you would be kind of embarrassed if you went back home and it became known that you were going to pay somebody more for working 3 hours than we pay the President of the United States for the entire year. I don't think so. Why do we have this kind of money in this bill? Because we are spending somebody else's money. Because as a prominent Democrat politician in my State said of this whole tobacco issue, ''We won the lottery. We won the lottery.''

All the Senator from North Carolina is doing is saying we are going to set the fee at five times the normal fee that is set. It seems to me that is imminently reasonable. As a matter of principle, if we were debating what our rules should be in this debate, my view is the States have settled these lawsuits and those settlements ought to stand. I believe that the Federal Government ought to be looking at Federal interests and letting the States settle these issues.

If that were the case, then I think setting this arbitrary cap would make no sense. But the point is that is not what we are debating. We are debating this great big, thick bill that goes back in and changes the settlement which sets out the amount of money that is going to be paid, which pays a payment to the States that is not directly related to what they settled for, which sets out in detail how we are going to spend this almost unbelievable amount of money, even for Washington, DC. The idea that we would do all these things and then we would suddenly get squeamish when it comes down to guaranteeing that we are not going to pay plaintiffs' attorneys $88,000 an hour, I think if we are suddenly going to become immodest about what we are doing in this bill, if shame is suddenly going to enter into our thinking, it is a little bit late at this point.

So I agree that this whole exercise has us doing things we ought not to be doing. But this is not my bill. I perfectly well understand this is not the bill of the Senator from Tennessee. His sentiments on the bill are the same as mine. I hope we can improve it. I hope we can find something we can all be for.

But I wanted to make my point, that to say we shouldn't be setting this fee when we are setting everything else doesn't make any sense. To say we shouldn't be abrogating contracts when the bill specifically abrogates contracts, it just does it through this arbitration board, which we shouldn't hide behind.

I think the choice is clear, and I am for the amendment.

Mr. THOMPSON. Will the Senator yield for a question?

Mr. GRAMM. If I have the time, I would.

Mr. FAIRCLOTH. I yield whatever time the Senator needs.

Mr. THOMPSON. I have a question. It seems to me that we both agree that we have a bill that we do not like and that we have an arbitration provision in that bill that we do not like. That legislation has not passed yet. The Senator says we are doing all of these things—we might; we might not; that has not passed.

Would it not be better for the Senator from Texas and me to join in trying to defeat that arbitration provision and trying to defeat that bill instead of adding to a bad provision an even worse provision that goes against our principles, that gets us involved in private litigation, and that causes people to have to send billing records up to the Judiciary Committee where we go through and try to justify some kind of an hourly rate?

Mr. GRAMM. Let me respond to the Senator's question. Generally, the case goes directly to the heart of the matter. If I thought that we could correct every problem with the bill, then I don't think there would be a need for this amendment. But my concern is that, given that anyone who opposes the bill is immediately tarred as being the lackey of the tobacco industry, given the head of steam, at least outside the beltway that the bill has, I am not confident we can correct it, and if the bill ends up passing so that my 85-year-old mother has to pay more for her cigarettes, which I wish she would quit smoking, I would at least be able to say that we guaranteed that no plaintiff's attorney is buying a Lear jet with that money.

So this amendment will make the plaintiffs' attorneys millionaires but it will not make them billionaires.

Now, should we have the power to stop them from being billionaires? If this were a State matter and we were not involved in it, my answer would be no. But this bill is a preemption of all those State settlements, so how can we do all those other things, set out in detail where the money is coming from and how it is going to be spent, and then leave the potential that we are going to be reading in the newspaper next month that a plaintiff's attorney got $88,000 an hour from the tax imposed on blue-collar workers? I don't want to risk that happening. That is why I am for the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. I yield 5 minutes to the Senator from Kansas, Mr. BROWNBACK.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I thank the Senator from North Carolina for yielding me 5 minutes. I want to stand up and speak on behalf of Grandma Gramm, that her money not go to lawyers as well.

Mr. President, I have been following this debate back in the office. I followed it for some period of time. I serve on the Commerce Committee. I initiated this debate in the Commerce Committee and discussed it there. It seems as if the points have been pretty well made, pretty significantly made and repeated in the true tradition of the Senate about five times, so we all get it pretty clearly.

One thing that I want to point out, though, at this juncture, because the debate has been engaging, is whether or not the Senate should set legal fees, whether we should get involved in this. And I generally, as a principle, would say no, we should not, but the fact is, in this bill we already are setting legal fees. We are setting them in this bill. And so to the extent that we are going to set them, I think the only question for us to ask ourselves is how much.

Should it be nearly $100,000 an hour or should it be $250 an hour? As to the question of whether or not we are setting legal fees, they are being set in this bill. In this bill, we are providing the money. We are setting in place the mechanism to give this money to the trial lawyers.

That is happening. I don't care how you cut it. That is what happens if this bill passes. If this bill doesn't pass, that doesn't happen. We are setting the amount the lawyers are going to get. The only question that remains is how much per hour is good compensation.

Now, I understand the good Senator from South Carolina. He and I debated this in the Commerce Committee. He thinks they are entitled to whatever they can get because they were the ones willing to put forward this litigation. They were the ones willing to put themselves on the line. They were the ones willing to say, I am going to go out here, and I may not get a dime or I may hit the jackpot. I hit the jackpot.

So they are entitled to get that. I understand that. But I can't vote for that. I can't in the Senate say I am going to tax the people so that we can transfer $100,000 per hour in legal fees.

I think Grandma Gramm would say $250 an hour is too much, too, but it is a lot closer and a lot better than $100,000 per hour. And this bill sets those legal fees. No matter how you cut it, it puts the money in place to set those legal fees. Without this bill, that money doesn't go. With this bill, that money does go to lawyers. So it is only a question of how much. I just ask my colleagues to look at it. Which is the more appropriate figure, $100,000 an hour or $250 an hour?

With that, everything having been said four or five times, I yield back the remainder of my time to the manager of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. How much time do I have remaining?

The PRESIDING OFFICER. Three minutes 45 seconds.

Mr. HOLLINGS. Mr. President, if there was any real sincerity or concern about money—and, incidentally, I never have seen my Republican friends ever worry about people making money. You all really are worried about people making money? Come on. You know and I know they would come in here and say, here is the head of Philip Morris—and I got all these things, billable hours—$85,779,000 with stock options there. That is his pay, according to the Wall Street Journal.

But I can play that game of so much an hour. Let's talk about the 5 years with nothing an hour. ''He either fears his fate too much or his dessert is small,'' we say in the practice, ''to fail to put it to the touch and win or lose it all.''

And the lawyers in Florida, in Texas, in Minnesota—nothing an hour as of now. Instead of a jackpot, they are hitting a hijacking on the floor of the Senate by a crowd that is trying to make TV shorts that HOLLINGS is in the pocket of the trial lawyers. The truth of it is, I am trying to get into their pocket. I can tell you that right now. And I might succeed. I got some names here from the different Senators around that seem to know them better than I do.

But in any event, the comeuppance is that blood, sweat, and tears. There isn't any question about it, by gosh, when you take the little lady who came in, and they decided to bring the case, and he got his friends in and they worked it. And I asked them. I said, ''I saw one account they had $5 million invested in the Mississippi case.'' They said, ''Well, they got that from the asbestos cases and everything else.'' Maybe that is what it is; the Chamber of Commerce just doesn't like class actions. But that is cleaning up bad medical devices, the implants, the asbestosis, and now cleaning up tobacco.

This is not a billable hours thing. They haven't got billable hours. Zero hours, 1993; zero hours, 1994, 1995, 1996, 1997, 1998. They haven't gotten a dime. And you all are trying to hijack them on what has been agreed to by the attorneys general, by the Governors, by the clients and everything else, preying around like vultures on agreements made. Ex post facto now, they want to come in and show how concerned they are. If you had been concerned, you would have done something about it. I have been up here 30 years, and they haven't done anything other than put the ad on a packet of cigarettes.

Now we have somebody who has brought tobacco to the bar of justice, and they haven't gotten anything yet—zero hours. And yet you all want to come in here and play this game about you are all worried about who is getting the money.

Mr. President, it is absolutely ludicrous for this group to come in. It is another design. It is just that you take a poll. They don't like lawyers in the poll, so they make the little TV short in the campaign this fall and they say so-and-so is in the pocket of the trial lawyers, yak, yak, yak, and everything else of that kind. But I will show where the attorneys general and the Governors and the parties all agreed and the work did it. And we didn't do it up here in Washington. Now is no time to come in here and start preying on people on an agreement that has already been made.

The PRESIDING OFFICER. All time yielded to the Senator from South Carolina has expired.

The Senator from North Carolina.

Mr. FAIRCLOTH. How much time do I have?

The PRESIDING OFFICER. Three minutes 9 seconds.

Mr. FAIRCLOTH. I yield 2 of those minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, we are looking at a situation that is literally intolerable. It is not acceptable to have these kinds of fees. I know contracts were entered into, but nobody expected it to break the way it did. We have law firms in States that literally did only a few weeks' worth of work; States are going to recover billions of dollars, and they are going to get 15, 20, 25 percent of that recovery. We already have provisions in this bill, agreed to by the President and the trial lawyers and the members of the other party, to contain some of these fees in a poor and ineffective way. I say if we can do it that way, let's do it straight up. Let's have a fair fee per hour: The more hours you work, the more money you get paid. We have evolving all sorts of contracts in this case and abrogating them, and we can certainly make a rational agreement on attorneys' fees.

I yield the floor.

Mr. FAIRCLOTH. I thank the Senator.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. We have been on this now for several hours, and we have come down to two things: Should we abrogate contracts or not? They say they are contracts with these attorneys, they have made these contracts. Well, maybe they have. But we are writing 750 pages of law abrogating contracts that the tobacco companies have written with advertising agencies, every condition conceivable. It is 750 pages of abrogating contracts.

Now, if anyone can sit here and tell me that they believe that $88,000 an hour, which is the established fee on the Texas attorneys, is a reasonable fee, now, this is being paid by taxpayers' dollars; we are collecting this

money from the working people. Seventy percent, as has been said by Senator GRAMM and many others, 70 percent of it is coming from people making less than $40,000 a year. This is Federal tax dollars. It might not have started out to have been Federal tax dollars, but that is what it has become when we tax cigarettes and put the tax on these people.

When I look at the reality, as I believe was mentioned by Senator GRAMM, when a Texas lawyer makes in 3 hours more than the President makes in a year, and a Texas lawyer makes more in an hour and a half than a U.S. Senator makes in a year, there is something wrong with the system. We might not be that good, but we aren't that bad.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator's time has expired.

Mr. HOLLINGS. Mr. President, under the agreement I move to table the amendment. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion by the Senator from South Carolina to lay on the table the Faircloth amendment, No. 2421.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mrs. BOXER (when her name was called). Present.

Mr. LOTT (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. SMITH) is necessarily absent.

The result was announced—yeas 58, nays 39, as follows:

[Rollcall Vote No. 142 Leg.]

YEAS—58

Akaka	Feinstein	Mikulski
Baucus	Ford	Moseley-Braun
Bennett	Glenn	Moynihan
Biden	Gorton	Murray
Bingaman	Graham	Reed
Breaux	Harkin	Reid
Bryan	Hatch	Robb
Bumpers	Hollings	Rockefeller
Cleland	Inouye	Roth
Cochran	Jeffords	Sarbanes
Collins	Johnson	Shelby
Conrad	Kennedy	Smith (OR)
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kohl	Thompson
Dodd	Landrieu	Torricelli
Domenici	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	
Feingold	Lieberman	

NAYS—39

Abraham	Enzi	Kempthorne
Allard	Faircloth	Kyl
Ashcroft	Frist	Lugar
Bond	Gramm	Mack
Brownback	Grams	McCain
Burns	Grassley	McConnell
Byrd	Gregg	Murkowski
Campbell	Hagel	Nickles
Chafee	Helms	Roberts
Coats	Hutchinson	
Coverdell	Hutchison	
Craig	Inhofe	
Santorum	Snowe	Thurmond
Sessions	Thomas	Warner

ANSWERED ''PRESENT''—2

Boxer Lott

NOT VOTING—1

Smith (NH)

The motion to lay on the table the amendment (No. 2421) was agreed to.

Mr. HOLLINGS. I move to reconsider the vote.

Mr. MCCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, it is now our intention——

Mr. FORD. I apologize to the chairman. Could we have order? The Senate is not in order.

The PRESIDING OFFICER. The Senate will come to order.

Mr. MCCAIN. Mr. President, I have several comments to make.

First of all, it is time we started getting a list of the amendments. So we would appreciate it if on both sides we could have Members get their amendments so that we could start in the process, as we always do, of narrowing down the amendments and seeing which can be agreed to and start looking at time agreements.

Mr. President, the second thing I mention is that we will now be going, as we have agreed amongst us to go, to the other side for an amendment. It is my understanding that amendment will be the issue of raising from $1.10 to $1.50 a pack. We would like to work on a unanimous consent agreement so that it would read that there would be the amendment relative to $1.50, and no second-degree amendments be in order to the amendment prior to the motion to table. Further, we would ask if the amendment is not tabled, it be open to relevant second-degree amendments, and the time between now and that time to be determined be equally divided, with a vote occurring on or in relation to the amendment.

The Senator from New Hampshire wants assurance as to when his amendment will be considered. We are trying to work that out with the majority leader. I know there are people on the other side who also want assurances for their amendments. I believe the Senator from Missouri, Senator ASHCROFT, is also looking for the same. But it would be our intention at this time, after the usual formalities, to move to the amendment on that side.

Mr. NICKLES. Will the Senator yield?

Mr. MCCAIN. I am glad to yield to the Senator from Oklahoma.

Mr. NICKLES. Just for the Senators' information, now the Senate just had a vote on limiting legal fees. That probably is not the only vote that we are going to have on that issue. And the Senator managing the bill, I compliment him for doing a very good job.

I might mention, some of us also have statements we would like to make on the bill. We have been on the bill now for a day. This is a very extensive, expensive bill. Some of us wish to speak on the bill. We wish to tell our constituents what is in this bill, maybe why we have some concerns, maybe so we might be able to influence people on how various amendments might go.

But I just tell my friend and colleague from Arizona, certainly the idea of going back and forth on amendments is acceptable, I think, for all Senators certainly on this side. But in all likelihood, there will be additional amendments dealing with the issue we just debated.

Mr. MCCAIN. I say to my friend from Oklahoma, I greatly fear there are lots of amendments right now that are being contemplated on both sides. That is why I think we have to start through this process.

I ask Members on this side to provide us with their amendments—so we can start through this process.

Mr. HOLLINGS. We are prepared on this side with the Kennedy amendment.

Mr. MCCAIN. IT IS STILL OUR DESIRE TO FINISH THIS BILL BEFORE THE WEEKEND.

I yield the floor.

Mr. GREGG. Reserving the right to object. Is the unanimous consent request propounded?

Mr. MCCAIN. No.

The PRESIDING OFFICER. There is no unanimous consent request.

Mr. GREGG. Mr. President, do I now have the floor?

The PRESIDING OFFICER. Yes.

Mr. GREGG. Mr. President, since I have the floor, I understand there is some comity here on amendments back and forth. But what I would like is to get an understanding, as we move through this process, that those of us who have amendments which have some impact on this bill and which need some time to be debated are going to get a commitment for time and a place when they will be brought up.

I can offer my amendment at this time. It is not my inclination to do that, if I can get an understanding without losing the floor that I am going to get a time to bring up my amendment.

I ask the leader of the bill if he would be willing to agree—and opposing side—if they would be willing to agree that the amendment on immunities, which I think everybody is familiar with and is sponsored by myself and Senator LEAHY, would be available to be brought up at a time specific on Thursday so that there will be a reasonable lead time here, and that time would be at 10 o'clock, assuming that is agreeable to everybody and we have 3 hours on that amendment and no second-degrees be in order and we proceed to vote on it.

Without that sort of an assurance, I am going to offer my amendment at this time.

Mr. DOMENICI. Will the Senator yield?

Mr. GREGG. I will not yield the floor, but I yield for a question. I yield to the Senator from New Mexico for a question.

Mr. DOMENICI. Senator GREGG, doesn't it seem like this is a very important bill? I gather that it is probably, in one fell swoop, adding more money to government than anything we have ever done in any single bill in modern history. Don't you think we have rules and we ought to take our time and do this in a normal manner that befits the Senate for one of the most important spending bills that we have had in decades?

Mr. GREGG. I think that is probably true. The Senator from New Mexico is accurate. The normal manner is to offer my amendment at this time, since I have the floor.

I am willing to wait until Thursday to do that if I get assurance——

Mr. MCCAIN. Will the Senator yield?

Mr. GREGG. I yield.

Mr. MCCAIN. Let me mention, the Senator and I just had a conversation where I said he would achieve his goal of a date certain for his amendment and he said he would agree to a time agreement.

Mr. GREGG. If I have the representation of the Senator from Arizona that sometime on Thursday, hopefully early in the day, we will get this amendment up, it will have a reasonable amount of time and will not be subject to second-degrees, to the extent if that is in the capacity of the Senator from Arizona, and the representation from the other side that that is possible, I am perfectly happy to go forward.

Mr. GRAMM. Will the Senator yield?

Mr. MCCAIN. May I say in response to the Senator from New Hampshire that it has been the custom in this body to go from one side to the other with amendments to start with. We just finished with an amendment from this side and would like to move to that side.

I, again, assure the Senator from New Hampshire that the only reason I cannot assure him right now is the majority leader is making these decisions, but I can assure him that the amendment will be considered. I will work on having it done sometime in the next 48 hours, with a reasonable time agreement, if that is reasonable to the Senator from New Hampshire.

Mr. GREGG. I think that is probably a reasonable statement from the Senator from Arizona, who has a fine reputation in this institution, and I will yield the floor.

Mr. MCCAIN. Mr. President, we need to move forward. I would like to move forward with an amendment, and I hope my colleagues would show that comity. It is the other side's turn.

I ask that after my friend from Texas makes any comment, if we could move forward. I yield for a question.

Mr. GRAMM. Mr. President, first of all, going back from one side to the other is the practice when we have a unanimous consent agreement. The Senate procedure is recognizing people who, in a timely fashion, ask to be recognized, and they are the first on their feet and they are recognized.

I went to great effort to try to see that no one objected to bringing the bill up, because I think the bill needs to be debated and I think we all need to be educated. But I am not going to agree to a time limit on an amendment that I have not seen, nor am I going to agree to not having a second-degree amendment on an amendment that I have not read, nor am I in any way going to limit my ability as one Member of the Senate to have a full debate. So I would be happy to have the Senator be recognized to offer his amendment tonight if we want a gentleman's agreement. It is a major amendment. If the Senator wants to require some debate, we will want to look at it and see if we want to second degree. We may or may not agree tomorrow to having a time limit on it.

Not having seen the amendment and not knowing exactly where we are, I just say to the Senator from Arizona, I am ready to move ahead. I would be happy to have the Senator recognized but I am not ready to waive my right and the right of every other Senator to a full debate to offer second-degree amendments. I want to put people on notice of that.

Mr. MCCAIN. Let me say—I believe I have the floor—that is exactly what we are doing. I just wanted to allow the other side to propose an amendment and then we will work on making sure everybody has their views and this amendment is debated and discussed thoroughly, and then we would look forward, obviously, to a time where we could vote on the issue.

Mr. KERRY. Mr. President, if I could say to colleagues, there has been a request for some colleagues to be able to speak on the bill. Last night, we were here for a period of time and there weren't many Senators here. Again, tonight, depending on the time that Senator KENNEDY is engaged in debate, there will be time, I am confident, for people to be able to speak on the bill. So I hope that Senators who have that desire will take advantage of that.

Secondly, I think there has been no effort whatever to try to limit the debate at this point. It is rather an effort to try to gather all the amendments, find out what the second-degree amendments are, share them with everybody on both sides, and have a sense of how we can proceed in an orderly fashion.

But as colleagues know, the manager of the bill could have come to the floor, filled a tree, held the floor, gone through an alternative process. We are trying to avoid that, trying to do this in a cooperative, bipartisan way, moving from side to side, recognizing the needs of a lot of Senators to be heard. So we hope Senators will take advantage of that.

The Senator from Massachusetts wants to be recognized now as the next Senator to propose an amendment.

Mr. NICKLES. Mr. President, I will be very brief. I am not trying to delay my colleague from Massachusetts.

I am telling my colleague from Arizona—and actually I told him in private what my colleague from Texas just said—I am not going to agree to a unanimous consent. This proposal was to vote on a $1.50 tax increase, and vote on or in relation to the amendment at 10 a.m. tomorrow morning. I am not going to. That is one of the largest tax increases in history. It says no second-degree amendments. Some of us aren't quite ready to go quite that fast.

This idea of saying submit all your amendments—I am working on a bunch of amendments, but I will tell you we just got the bill last night. We were being pretty collegial saying we are not going to object to going to the bill. We could have tied the Senate up for 3 days and had more time to study the bill. Some of us need time to study the bill. Some of us are reading the bill and there are interesting things to find.

On the first day the bill is on the floor to say we will have an amendment introduced at 6 p.m. and we will vote tomorrow morning at 10 a.m. on the largest tax increase, without giving us a chance to offset it, without giving us a chance to amend it, I think is a serious mistake.

Now, we are not going to be railroaded. It takes unanimous consent to pass this kind of amendment or get this kind of agreement. I told my good friend from Arizona he is not going to get it. So we can have the debate. We need to have the debate. We need to talk about whether this is a tax increase or price increase. I think we need to study this thing a little bit further and not try to railroad it through the Senate.

I am happy to yield to my friend from Utah.

Mr. HATCH. This is not some itty-bitty bill. This involves as much as $860 billion, according to some.

Is the Senator aware of that?

Mr. NICKLES. Yes, I am.

Mr. HATCH. Is the Senator aware that there are all kinds of viewpoints about this bill?

Mr. NICKLES. Absolutely.

Mr. HATCH. On both sides of the floor.

Is the Senator aware that, frankly, there is no way of getting voluntary protocols under this bill that would resolve the constitutional issues involved in this bill, especially with regard to the look-back provisions, the ban on advertising, and other issues?

Mr. NICKLES. I appreciate my colleague's remarks, the chairman of the Judiciary Committee. I know he has had hearings on at least tobacco legislation. I don't know that anybody has had hearings on this bill.

Right now we are being asked to vote on some of the most significant amendments of this bill and we really have

had very little time to even debate the general provisions of the bill, to maybe ask the sponsor of the bill and the proponents of the bill to explain some sections.

Just to give you an example, there is a look-back provision. The Senator from Utah said maybe it is unconstitutional. There was a look-back provision that was added that wasn't passed out of the Commerce Committee and that wasn't passed out of the Finance Committee. It was just added. It was introduced last night. The look-back provision says we are going to do sampling and find out. If we don't meet the target for teenage consumption, as specified, there will be a penalty of $1,000 per teenager who smokes specific brands.

It looks very bureaucratic and, frankly, unworkable to this Senator.

Mr. HATCH. Will the Senator yield?

Mr. NICKLES. Yes.

Mr. HATCH. I have to tell the distinguished Senator from Oklahoma that we had constitutional experts come in and say there is no way that look-back provision is constitutional. They are also saying that, of course, they tried to cure the advertising restrictions by adopting the FDA regulation. But we have top-flight, from the left to the right, constitutional experts saying that is unconstitutional.

Then, last but not least, we have a section 14 on here that basically talks about the other advertising restrictions that almost everybody agrees are essential if we want to do something about teen smoking, and, by gosh, those other advertising provisions have got to have a voluntary protocol, have to have the tobacco companies on board in order to be effective, or they are unconstitutional. What are we going to do? Vote for an unconstitutional bill, or work on it, and work, as the Senate should, on a bill that could amount to as much as close to $900 billion?

Mr. NICKLES. I appreciate the Senator's comments. I will yield the floor in just a moment. I just make the comment to my good friend and colleague, I stand willing to work with him. I have no intention of unduly delaying. I know my colleague from Massachusetts has an amendment to increase—I don't know if it is taxes or fees of $1.50. I know there are other amendments dealing with the taxes, or the fees, and we need to address those. We can do so. I just do not think we can do it in that short of a timeframe that was proposed.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. MCCAIN. Mr. President, I believe I have the right of first recognition.

The PRESIDING OFFICER. The Senator from Massachusetts has been recognized.

Mr. KENNEDY. The Senator from Arizona, as I remember, had the floor.

Mr. MCCAIN. Mr. President, I seek recognition. I thank the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Just a brief comment: I thank the Senator from Oklahoma for his concerns, and the Senator from Texas, the Senator from Utah as well. We would like to get amendments together so we can move forward. I understand the concerns. They have been made to me, and on this floor. We look forward to a vigorous debate.

I thank the Senator for his willingness to work, all of us together. I thank the Senator from Massachusetts for his indulgence.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

AMENDMENT NO. 2422 TO MODIFIED COMMITTEE SUBSTITUTE

(Purpose: To modify provisions relating to industry payments)

Mr. KENNEDY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself, and Mr. LAUTENBERG, Mr. CONRAD, and Mr. GRAHAM proposes an amendment numbered 2422 to the modified committee substitute.

The text of the amendment reads as follows:

Beginning in section 402, strike subsection (b) and all that follows through section 403(2) and insert the following:

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the participating tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in paragraph (4) and section 403:

(1) For year 1—$14,400,000,000;

(2) For year 2, an amount equal to the product of $1.00 and the total number of units of tobacco products that were sold in the United States in the previous year.

(3) For year 3, an amount equal to the product of $1.50 and the total number of units of tobacco products that were sold in the United States in the previous year.

(4) For year 4, and each subsequent year, an amount equal to the amount paid in the prior year, multiplied by a ratio in which the numerator is the number of units of tobacco products sold in the prior year and the denominator is the number of units of tobacco products sold in the year before the prior year, adjusted in accordance with section 403.

(c) PAYMENT SCHEDULE; RECONCILIATION.—

(1) ESTIMATED PAYMENTS.—Deposits toward the annual payment liability for each calendar year under subsection (d)(2) shall be made in 3 equal installments due on March 1st, on June 1st, and on August 1st of each year. Each installment shall be equal to one-third of the estimated annual payment liability for that calendar year. Deposits of installments paid after the due date shall accrue interest at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date.

(2) RECONCILIATION.—If the liability for a calendar year under subsection (d)(2) exceeds the deposits made during that calendar year, the manufacturer shall pay the unpaid liability on March 1st of the succeeding calendar year, along with the first deposit for that succeeding year. If the deposits during a calendar year exceed the liability for the calendar year under subsection (d)(2), the manufacturer shall subtract the amount of the excess deposits from its deposit on March 1st of the succeeding calendar year.

(d) APPORTIONMENT OF ANNUAL PAYMENT.—

(1) IN GENERAL.—Each tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). The annual payment is the obligation and responsibility of only those tobacco product manufacturers and their affiliates that directly sell tobacco products in the domestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

(2) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the calendar year. One month after the end of the calendar year, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

(3) CALCULATION OF TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a tobacco product manufacturer shall be equal to that manufacturer's share of adjusted units, taking into account the manufacturer's total production of such units sold in the domestic market. A tobacco product manufacturer's share of adjusted units shall be determined as follows:

(A) UNITS.—A tobacco product manufacturer's number of units shall be determined by counting each—

(i) pack of 20 cigarettes as 1 adjusted unit;

(ii) 1.2 ounces of moist snuff as 0.75 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.35 adjusted units.

(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a smokeless tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units:	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

(C) ADJUSTED UNITS DETERMINED ON TOTAL DOMESTIC PRODUCTION.—For purposes of determining a manufacturer's number of adjusted units under subparagraph (B), a manufacturer's total production of units, whether intended for domestic consumption or export, shall be taken into account.

(D) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a tobacco product manufacturer has more than 200 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

(E) SMOKELESS EQUIVALENCY STUDY.—Not later than January 1, 2003, the Secretary shall submit to the Congress a report detailing the extent to which youths are substituting smokeless tobacco products for cigarettes. If the Secretary determines that significant substitution is occurring, the Secretary shall include in the report recommendations to address substitution, including consideration of modification of the provisions of subparagraph (A).

(e) COMPUTATIONS.—The determinations required by subsection (d) shall be made and certified by the Secretary of Treasury. The

parties shall promptly provide the Treasury Department with information sufficient for it to make such determinations.

(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

(1) EXEMPTION .—A manufacturer described in paragraph (3) is exempt from the payments required by subsection (b).

(2) LIMITATION.—Paragraph (1) applies only to assessments on cigarettes to the extent that those cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed to consumers in any calendar year.

(3) TOBACCO PRODUCT MANUFACTURERS TO WHICH SUBSECTION APPLIES.—A tobacco product manufacturer is described in this paragraph if it—

(A) resolved tobacco-related civil actions with more than 25 States before January 1, 1998, through written settlement agreements signed by the attorneys general (or the equivalent chief legal officer if there is no office of attorney general) of those States; and

(B) provides to all other States, not later than December 31, 1998, the opportunity to enter into written settlement agreements that—

(i) are substantially similar to the agreements entered into with those 25 States; and

(ii) provide the other States with annual payment terms that are equivalent to the most favorable annual payment terms of its written settlement agreements with those 25 States.

SEC. 403. ADJUSTMENTS.

The applicable base amount under section 402(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

(1) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 402(b)(4) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the annual increase in the CPI.

(2) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(3) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

Mr. KENNEDY. Mr. President, I want to express my appreciation to the Senator from Arizona, who, as I understand, was trying to work out a decent process so that we might debate this during the course of the evening, and then at least work out some process where we could have a fair allocation of balance in terms of time as we debated it tomorrow. I hope those who support that position would, if we don't get a formal agreement, at least follow that process tonight and also in the morning. Then the leaders and those who are interested in either extending debate, or amendment, or whatever they want to, will proceed and will obviously have the right to do it.

I want to thank the Senator from Arizona, who was trying in his conversations with us to work out a process so there could be an adequate time for debate and discussion, and also balance in terms of time between those who favor this position and those who are opposed to it.

I want to express our appreciation to all of our Members for the opportunity of raising this issue with my friend and colleague from New Jersey, Senator LAUTENBERG, who has been one of the really important leaders here in the Senate on the tobacco issues; also, our friend and colleague, Senator CONRAD, who has been the chair of a task force on the tobacco-related issues, and has been really tireless in terms of developing a command of this issue, and has also been tireless in trying to work out bipartisan support, not just on this issue but on other issues as well; our friend, Senator DURBIN, who has been so involved in this issue, in particular on the price, as well as a number of my other colleagues; my colleague from Massachusetts; Senator REED; and so many others. I am grateful to all of them.

We look forward over the period of these next several hours and hopefully at a time during tomorrow morning to be able to present this issue to the U.S. Senate.

We are very mindful that only a few hours ago, just a few yards from where we gathered this evening, we had the good opportunity to be with Dr. Koop, who is really the foremost public health official in this country and who has been such a leader in protecting the children in this Nation on this issue, as well as many others. I think that all of us who were gathered there were impressed that Dr. Koop was speaking on behalf of all of the public health community. It was really a singular voice in which he spoke for all of the public health communities. We can spell out the reasons why as we get into the debate and discussion on this issue. He was speaking not as a partisan, not as a Republican, not as a Democrat, but for all Americans, because that is what his service has been to this country as our Surgeon General. He has been the defender of the public health, and also as one who is a keen analyst as to what has been the real strategy of the tobacco industry over the period of these past years, who recognized what their strategy was in order to meet their financial requirements, that it was going to have to make a particular appeal to the children in this country.

He spelled that strategy out long before it became evident as a result of the various publications of various documents that have been made available to the American people during the process of the various State suits. He is really one of the great giants.

I took the opportunity at that time to thank him for his strong support of an amendment that was going to raise the price of a package of cigarettes to $1.50, because this would mean anywhere from 750,000 to 900,000 young people who would not be engaged in smoking and anywhere from 250,000 to about 300,000 young people children who would not die a premature death.

I thanked Dr. Koop on that occasion for the families. I thanked him for the children who would not have the addiction. I thanked him for their parents because their children would not be addicted. I thanked him, for all Americans, for his willingness to take a stand on this issue.

Mr. President, the amendment we are bringing here this evening is not an issue which is strange to the Members of this body over the period of these past weeks and months. I think all Americans have probably had the opportunity to listen to the public health community, represented, as I said, by Dr. Koop, and Dr. Kessler, and the representatives of many of those that have been afflicted with the kinds of illnesses and diseases that have been caused by addiction.

We have heard the uniform appeal—the uniform appeal of all of those who have really studied this issue in any detail—that if we are going to have a significant impact on reducing the addiction of children in our country, the best way to do this is by having an increase in the cost per pack of cigarettes, and to do it in a timely way.

By ''in a timely way,'' we mean doing it rapidly. We have devised this amendment to be a stepped-up process over a period of 3 years. There are others who have favored a $1.50 increase a pack in a 2-year period. We have accepted that particular challenge and followed their guidance. This amendment, more than any other proposal or amendment that is going to come in this Chamber, is motivated by protecting the children of this country. That is the reason behind this amendment, clear and simple. If you are interested in public health, you support this amendment. If you are interested in protecting children, you support this amendment. If you are interested in doing something about the problems of addiction and children, you support this amendment. If you are interested in trying to provide some limitation on children being involved in gateway drugs, you support this amendment.

For all of these reasons and many more, this is a compelling amendment, and it is supported overwhelmingly by the American people, by families all over this Nation, Republican and Democrat, North and South alike. We will have the charts available that will indicate what the various data reflect. That is important and useful perhaps for some.

But what we are motivated by and why we are offering this amendment is because of public health. Those who have studied this issue in terms of children believe that this is the first and most important step we can take to reduce the smoking addiction of children.

This chart, Mr. President, points out very quickly and easily for the benefit of the Members the number of children who will be deterred from smoking by an increase of $1.10, 3 million; $1.50, 3,750,000. The difference of the proposal that is in this Chamber will be 750,000. That is what we are talking about by accepting this particular amendment. We will come back to elaborate on that

in a while. We are talking about the number of children whose lives will be saved by the cigarette price increase. We are talking about 125,000 who will have an early death.

I think one of the questions we are going to be asked sometime during this debate is, well, this is fine and well that you talk about increasing the cost per pack to $1.50, but how do we know this is really going to have the impact that you are stating here this evening?

We will have a chance again either later tonight or tomorrow to go through a number of the public health reviews and the studies and the testimony that has been taken by a number of the committees over the period of these past weeks. We have had a number of committee hearings on this very issue. But perhaps one of the most impressive factors has been what happened with the significant price increase in our neighboring country of Canada that moved up to a $5 per pack price increase in 1991 and what happened to youth smoking over that period of time. You see the dramatic reduction of youth smoking as a result of the significant increase in the price of cigarettes.

I hope we will not have to take a great deal of time to review that particular phenomenon. It is irrefutable. It is absolutely irrefutable. The public health information is irrefutable; that with a dramatic and significant increase in the price we see a significant reduction in youth smoking. This is one of the clearest examples to demonstrate what we hope will be achieved.

We have set a goal of a 60-percent reduction in youth smoking over 5 years by increasing the price per pack of cigarettes. That is a national goal, and that has been one that has been stated and reaffirmed by many, even those who do not support this particular proposal. The only way we will get the 60-percent reduction over the 5-year period is by going to $1.50 per pack. That is basic and that is fundamental. But I just mention here that after a period of time we saw there was a growth in terms of the black market in Canada.

Mr. President, 85 percent of the Canadian people live proximate to the United States. There was an increase in smuggling, and there was a decision that was made by the Government of Canada to basically leave it up to the Provinces as to whether they were going to maintain their increase in the higher cost per pack. So they left it up to the particular Provinces, and the result from leaving it up to the Provinces is in the Provinces that maintained the higher cost, we saw the continuation of a significant reduction in youth smoking—a significant reduction.

We will have a chance perhaps, if necessary, to go Province by Province, but, nonetheless, that was the result. We cannot make the case any clearer than has been made, that this particular amendment is the amendment that deals with children; this particular amendment is the amendment that deals with addiction. If you are interested in trying to do something in the interest of public health, this is the amendment, with all due respect to the other amendments. We understand the relationship that they have to each other, and I am a strong supporter of the other provisions of the legislation. With the dramatic proposals that we are making here on the increase in the cost, when you have the other programs that are built in to deter individuals from beginning smoking and the other reductions in advertising, all of it has a symbiotic effect that will have an important impact on children. We are doing everything we can.

The basic support for the proposal we are advocating today is a culmination of everything that has been recommended to us by the public health community. We have taken their recommendations and now are bringing them to the Senate. We know the American people are for it. The question is going to be, are we going to have the support of the Members or is the power of the cigarette and tobacco industry, which has been reflected in so many ways over the period of recent months and in recent years, going to be again demonstrated in this Chamber in terms of resisting these issues.

Senator CONRAD, who has held hearings with regard to the issues of smuggling and what will the impact of this be on the tobacco industry. All of these issues are important, but make no mistake about it, Mr. President, those of us who are advocating this amendment are advocating it for a very fundamental reason, and that is to protect children in our country and in our society, and we believe that the kinds of protections we are offering here are the kinds of protections that are going to have the most important impact for our country.

We offer this amendment which is really one we believe the Senate should move towards and be willing to accept. We can go back in terms of the time and understand what is really happening out there in America, the impact that tobacco has on the young people of this country.

I see my colleagues from New Jersey and North Dakota are here and ready to address this issue, but let me just take a few moments to go through the way children become involved in the addiction of tobacco.

Smoking begins early, Mr. President. 16 percent of adults who are daily smokers began smoking—and these are the cumulative figures—by age 12. Just think about it. By the age of 12, 16 percent; by the age of 14, 37 percent. By 16 or under, we are talking about 62 percent. These are the children who become addicted. These are the children who do not have the benefit of being able to make a balanced and informed judgment about going ahead and involving themselves in the use of tobacco.

We are talking about very young children who begin the utilization of tobacco and move on through. By the age of 16, 62 percent of those who eventually are going to become addicted have already started down that path, and they are the ones who have been targeted by the tobacco industry for marketing—for addiction. It is for these children that the studies demonstrate that the increase in the costs of tobacco, because of the limitations in their purchasing power, will be a very, very powerful and important disincentive to these young people. Added to the other features of the program, it will be a serious disincentive for them to get started smoking.

Mr. President, I will wind up now to let my colleagues speak. I hear often: Isn't this really a disservice to those families who may be involved in smoking, that they will have to pay, really, a disproportionate share because we will have an increase in the costs of these cigarettes? I must say, that is an argument that you hear out here occasionally on the floor of the U.S. Senate, but the fact is I don't hear that back home in my State of Massachusetts. People, even in blue-collar areas, who perhaps smoke more than others in a community, are saying we are not less concerned about our children than those who may come from a different socioeconomic background. Those working families are concerned about their children. Time in and time out, when you ask working families, ''Do you want to do something about reducing the opportunity for your children to start smoking,'' their answer is yes, and overwhelmingly yes. Because they understand, as all of us understand, that these children, once they get started down the path towards addiction, find it extremely difficult if not impossible, to begin to get control.

Mr. President, I will yield the floor now. I look forward to our continued discussion of this.

I ask unanimous consent to add the names of Senators HARKIN and WELLSTONE as cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arizona.

Mr. McCAIN. Mr. President, I do not support this amendment. I don't doubt that the goals of the Senator from Massachusetts and those who support this amendment are the same as those who support the underlying bill, which is $1.10. I reject the notion that more is automatically better. There is a point at which we have gone too far. Some believe strongly we have already passed that threshold. We just had a little discussion while we were waiting, while the Senator from Massachusetts was waiting to propose his amendment, that amplified the concerns of many who believe this legislation has gone too far. On the other side, there are some, including the sponsor of this amendment, who believe we have not gone far enough. I don't want us to engage in a bidding war. If $1.50 is acceptable, then why not $2 or $3 or $5, et cetera?

I point out to my colleagues a very important point here. The bill already has a mechanism for increasing the price of tobacco if other methods fail. That is what we call the look-back provisions. The look-back provisions are penalties that are both company specific and industry wide, if there is not a decrease in teenage smoking.

If our goal is to reduce teenage smoking, which it is, then these look-back provisions achieve what the amendment of the Senator from Massachusetts seeks. I have not been around as long as some, but too often our fidelity to a cause is measured only by how high a price we can extract and how much we are willing to bid up.

It was back in March when the Commerce Committee began work on this issue. We worked for a long time and we came out with a package by a 19 to 1 vote. As part of that package, it was determined that $1.10 was the appropriate cost—the price of a pack of cigarettes. I might add that was also the position of the White House, the administration, that $1.10 was the appropriate number.

Since then, we have toughened the look-back provisions. We have raised the cap on how much liability the tobacco companies would have on an annual basis. We have toughened up this bill to the point where it has been of great concern on the other side of the aisle. The $1.10 was part of a carefully negotiated package. In and of itself it was not a magic number. The $1.10 was a tradeoff in return for a cap on liability, in return for the look-back provisions, in return for a number of other things—the language concerning the authority of the FDA. So, this was all put together in a package.

I say to the Senator from Massachusetts that he was not part of those negotiations because he is not part of the committee. That is very understandable, although I noted during the time we were doing those negotiations the Senator from Massachusetts was very vociferous in his opposition to almost anything that we did. In fact, he was quoted in the newspaper, much to my surprise, as criticizing the committee, which I chair. I was somewhat intrigued by that, but that certainly is the right of the Senator from Massachusetts to question the credibility of the Commerce, Science, and Transportation Committee.

I respect the commitment of the Senator from Massachusetts to the children of America. I respect his belief that $1.50 will do more than will $1.10. But I urge my colleagues to understand that the $1.10 was not plucked out of the air. The $1.10 was the best expert advice we could get and with the concurrence of the administration. There are those in the public health community who agree with the Senator from Massachusetts that it is not high enough. There are others in the public health community who say that $1.50 is not enough. There are those on both sides of the aisle who think we should have no protections of any kind nor anything for the tobacco industry. Frankly, I believe that would just kill the tobacco industry.

We are not in the business of trying to kill the tobacco industry. Let's keep that in mind. Because, if 40 million Americans are going to smoke, they are going to continue to smoke, and we are not going to be able to prohibit that. We tried that with alcohol many years ago. But if we are trying to attack the issue of kids smoking, we do have a problem with too high a cost for a pack of cigarettes. That has been highlighted by the Senator from Utah concerning the possibility of contraband. There is a problem, obviously, with too high a cost for a pack of cigarettes, that there would be a black market that would spring up in America. We used the best advice that we could get from throughout the administration, from the public health community, and from many others, which allowed us to come up with $1.10 as the cost of a pack of cigarettes to achieve the goal of reducing teenage smoking, along with the other aspects of this comprehensive settlement.

I point out again to my colleague from Massachusetts, we have a look-back provision in the bill. For every child over the quota in the percentage that is not reduced by the tobacco companies, there is a $1,000-per-child penalty provision in this bill. That effectively achieves the goal which I believe this amendment seeks.

Mr. President, I know there are many other speakers. We will probably discuss this some more between now and final passage.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from Missouri.

AMENDMENT NO. 2427 TO AMENDMENT NO. 2422

(Purpose: To strike provisions relating to consumer taxes)

Mr. ASHCROFT. Mr. President, I rise today to offer an amendment. My amendment addresses this massive tax that is to be imposed on the people of this country, particularly on hard-working, poor people in America. My amendment strips this legislation of the provisions which will impose $755 billion in new taxes on the American people.

More precisely, my amendment strikes the upfront payment of $10 billion. Tobacco companies won't bear the cost of this payment; consumers will.

This bill, which purports to vilify the tobacco companies—and I am certainly not here to defend them. As a non-smoker, and having watched a number of my friends die as a result of smoking, I am not here to defend the tobacco companies. But the bill specifically provides that tobacco companies will not bear the cost of these payments, consumers will. This bill requires and would make law the fact that tobacco companies can't bear this cost of $755 billion. This bill requires that consumers bear this cost. They will bear the cost in the form of higher prices, and there are actually penalties in this proposed law for the companies if they do not transfer to the consumers any of these costs.

''Section 405. Payments to be passed through to consumers.'' Here is the text of the law itself:

> Target price. Each participating tobacco product manufacturer shall use its best efforts to adjust the price at which it sells each unit of tobacco products in the domestic market or to an importer for resale in the domestic market by an amount sufficient to pass through to each purchaser on a per-unit basis an equal share of the annual payments to be made by such participating tobacco product manufacturer under this Act and the Master Settlement agreement for the year in which the sale occurs.

The specific law of the statute requires that these so-called penalties are really not penalties on the tobacco companies at all—that these so-called penalties penalize the consumers. It is strange, indeed, to say to individuals, ''The tobacco companies have been misbehaving. For years, they have been targeting you unduly, they have been providing you with a product which is deleterious to your health, and what we are going to do to them is nothing, basically, except to protect their markets, make sure their market shares are locked in, and give them protection from civil prosecution. But because you have been the recipient of the disease and the difficulty you have from smoking, we are going to pass through the payments to you.''

This is adding insult to injury in the most classic of all ways. Remember, these are not penalties on tobacco companies, they are taxes levied on the users of tobacco products.

Tobacco companies will still pay hefty penalties if teenage smoking targets are not met, but consumers will be safe from hundreds of billions of dollars in new taxes if my amendment is adopted.

The so-called look-back provisions of this proposed law say that tobacco companies are going to have stiff penalties to pay if teenage smoking doesn't decline, and those stiff penalties are left in place by the amendment which I am offering.

It is only the consumer, who is being asked to pay substantially higher prices by way of what really amounts to a tax, who will be saved the $755 billion which will otherwise be occasioned on those consumers in the event my amendment is not adopted.

Americans today are working longer and harder than ever to pay their taxes. The Federal budget is in surplus. Congress should be debating how to return money to the taxpayer, not how to siphon more out of the pockets of working Americans.

This is nothing more, nor less, than a massive tax increase on the American people—$755 billion, which the law requires to be passed through to consumers. Not that they receive $755 billion; the law requires that consumers end up

paying $755 billion more as a means of punishing the tobacco companies—three-quarters of a trillion dollars in penalties to consumers whom we are trying to protect.

As currently drafted, the proposed tobacco bill is nothing more than an excuse for Washington to raise taxes and spend money. It seems strange that, in this town, virtually anything will be an adequate excuse for raising taxes. Bad decisions by free people become excuses for massive tax increases in this country.

This is the largest proposed increase in Government since President Clinton proposed his health care scheme. Oddly enough, his health care scheme was greeted initially with a relatively high level of support. But as the public learned more about the health care scheme, they understood that it was more scheme than health care, and, frankly, as the public learns more about this so-called tobacco settlement, they will realize that it is far more tax and Government than it is anything else—17 boards, commissions, and agencies.

This huge tax increase will be levied against those who will be least capable of paying. According to the Congressional Research Service, right now we know that tobacco taxes are perhaps the most regressive tax levied in America. Tobacco taxes are perhaps the most regressive taxes levied in America. About 60 percent—60 percent, 59.4 percent I think is the number; yes—59.4 percent of the new $755 billion tax will land on people who make less than $30,000 a year.

These are young families. They are working families. To take a three-pack-a-day figure from those families, some $1,600 a year, is to take their capacity to provide for their families and require it to be spent in Government on something else, something that the bureaucrats in Washington will consume, something that will not go to benefit their families.

Sixty percent of the tax will fall on families earning $30,000 a year or less. Households earning $10,000 will feel the bite of this tax increase most of all.

Listen to this: The Joint Committee on Taxation estimates that these households will see their Federal taxes rise by 44.6 percent. As currently drafted, this legislation will cause someone who smokes two packs daily to pay the Government an annual additional fee of $803—an additional $803. Smoking is already an expensive habit, and the collection of this money is predicated upon the fact that people will not quit, not that people will quit. You can't get these kinds of numbers, $755 billion, from people who quit. You are going to get this amount of money because you know people won't quit and can't quit, and the reason by those who come forward with this tax is, it is necessary, they say, because this is addictive.

They say people can't quit. That is what is wrong with tobacco. And yet they say that people will choose to pay this because they choose to continue to smoke. Whether they choose to or not, someone who earns $10,000 a year, already spending a couple hundred, maybe $1,000 of that $10,000 on cigarettes, now has to pay the Government of the United States an additional $803 annually. Frankly, my amendment would prevent that from happening.

As currently drafted, this legislation allows tobacco companies to deduct the mandatory payments ultimately paid by consumers as a regular business expense. So what we have here is really an implied subsidy of the tobacco industry, tobacco companies being able to pass through costs to the consumer which the tobacco company then gets to deduct.

Again, we find ourselves, here in this setting, subsidizing tobacco companies, megatobacco companies, the cash cows of American industry, we are subsidizing these companies by placing on ordinary human beings, working families—we are subsidizing them by placing this $755 billion tax on working families. Over 5 years, that write-off would be worth about $36 billion to the tobacco industry. I cannot imagine anything more inappropriate than to take money from the hard-working families of America and then to use that money which we have taken from the hard-working families of America to provide a $36 billion subsidy through special write-off provisions for the tobacco industry.

By eliminating the annual payments, my amendment would prevent the tobacco companies from claiming the deduction. I think we should stop the subsidy for tobacco, in particular for tobacco companies, especially providing a subsidy for them by allowing them to deduct payments that are not really going to be made by them—payments that are going to be passed through to consumers, hard-working families with children to feed and clothe, families with payments to make, families of individuals who might want to quit smoking but cannot. This bill is predicated upon the fact that these families will continue.

This massive Government bureaucracy that is planned and the massive amounts of spending that are projected are all based on this willingness expressed in this bill to tax ordinary working families—ordinary working families—massive amounts. And 59.4 percent of the money will be paid by families under $30,000; 3.7 percent by families making $115,000 or more. This is the most regressive graph of taxation that I have seen since I have had the opportunity to serve in the U.S. Senate.

Before we consider passing a massive tax increase like this, it would behoove us to review the Government's record thus far with respect to taxes, spending, and Government employment. In Washington, DC, taxes and spending are more addictive than nicotine.

In the 15 years prior to 1995, Congress passed 13 major tax increases. Let me refer to the chart which has just been set up here. The Crude Oil Windfall Profit Act of 1980; the Omnibus Reconciliation Act of 1980; the Tax Equity and Fiscal Responsibility Act of 1982; the Social Security Amendments of 1983; the Deficit Reduction Act of 1984; the Consolidated Omnibus Budget Reconciliation Act of 1985; the Omnibus Reconciliation Act of 1986; the Omnibus Budget Reconciliation Act of 1987; the Technical and Miscellaneous Revenue Act of 1988; the Omnibus Budget Reconciliation Act of 1989; the Omnibus Reconciliation Act of 1990; the Energy Policy Act of 1992; the Omnibus Budget Reconciliation Act of 1993—15 years, 13 major tax increases.

Mr. KERRY. Mr. President, will the Senator yield for a question?

Mr. ASHCROFT. I will yield for a question.

Mr. KERRY. Didn't most of those also have tax cuts in them?

Mr. ASHCROFT. I think it is pretty clear that the amount of money being taken from the American family is going up and up. This year, for example, the average American family had to work until the 10th day of May—we just passed it—for Government. That was the time it took for people to satisfy the obligation to Government. That time has been extending into the year very rapidly through this entire time period.

It is true that very frequently the Congress gives a little bit here and takes a lot here, so that there are in this time setting different changes in the taxes. But if you want to look over the period of time—and I think it would be a fair thing to do; and I will be happy to do that; and I will bring information about that to the floor—that over time—over time—the Congress of the United States has taken a bigger and bigger and bigger bite of the income of workers in the United States. And, as a matter of fact, this would be another huge bite it would take out of the workers, especially of low-income families.

Mr. KERRY. Mr. President, I appreciate the Senator being willing to yield. And I just wanted to make it clear that the record was clear in his answer that there were tax cuts of significance. You can make adjustments as to who might have benefited and who did not, but those were not just tax increases. I think that is an important point.

I thank the Senator.

Mr. ASHCROFT. I thank the Senator from Massachusetts.

These items, which I have listed here, are times when the taxes were raised on American families and American industry. I think over time most of us understand that we are paying more in taxes now than ever before. As a matter of fact, right now Americans work harder and longer in peace and prosperity than we have worked at any time in history to pay our taxes.

So whether or not there were a few things in this list where someone was

given a tax break while someone else had a tax increase, that may have been the case, but the truth of the matter is, we have been taking two steps backwards at least for every step forward. Government has been taking a bigger and bigger and bigger share. And now Americans work further and further into the year every year in order just to satisfy the appetite of Government rather than to provide for themselves.

Last year's Taxpayer Relief Act was the first meaningful tax cut since—well, since about 1981. And the tobacco tax increase would more than erase every bit of what we did last year in terms of taking more from the American people. It seems to me that what we need to do is not go back on what we did last year; we need to extend what we did last year. We do not need to increase taxes. Taxes are at an all-time high.

Tax freedom day, as I mentioned, was May 10 this year. Federal, State, and local taxes claimed 37.6 percent of the income of a median two-income family in 1997. Now, these taxes were more than the couple spent on food, shelter, clothing, and transportation—more than they spent on their cars, their houses, their food, and their clothing.

It seems to me that we ought to be wondering about how we could reduce taxes. During Bill Clinton's first 5 years in office, the Federal Government collected 29 cents in taxes for every dollar increase in the gross domestic product. According to the Joint Economic Committee, ''The federal government is now taking a higher share of economic growth than under any president in recent history.''

The Joint Economic Committee continues: ''The average rate during the entire era before President Clinton—from Presidents Eisenhower to Bush—was 19%.'' We are now taking 29 cents of each dollar increase in domestic product.

Obviously, the Federal Government has yet to reject the sentiment expressed by King Henry IV nearly 600 years ago. He put it this way: ''You have gold. I want gold. Where is it?''

Well, I think we have a bill here that says, ''You have gold. We want gold. And we don't care how poor you are. We don't care how you're struggling to make ends meet.'' As a matter of fact, we will make a very repressive tax, but we want to spend. Tax-and-spend as tax-and-spend—it does not matter which party sponsors it, who does it. Tax-and-spend is the invasion of Government in the province of the lives of individuals, and we have every reason to want to reject it.

To collect this bounty, the Federal Government has developed a complex system. A recent report by the Heritage Foundation reveals just how complex.

Mr. President, 136,000 employees at IRS and elsewhere in the Government who are responsible for the tax laws; $13.7 billion is the amount of tax money spent by the IRS and other agencies to enforce and oversee the code; 17,000 is the number of pages of IRS laws and regulations, 12,000 not including Tax Court decisions and IRS letter rulings—12,000.

And 5.5 million is the number of words in the income tax laws and regulations; 820, the number of pages added to the Tax Code by the 1997 Budget Act; 250 is the number of pages needed to explain just one paragraph in the Internal Revenue Code; 271 is the number of new regulations issued by the IRS in 1997; 261 is the number of pages of regulations needed to clarify the Tax Code's ''arms-length standard'' for international intercompany transactions, and on and on and on.

Incidentally, 293,760 is the number of trees it takes each year to supply the 8 billion pages of paper used to file income taxes in the United States.

Many years ago, Senator Everett Dirksen quipped, ''a billion dollars here, a billion dollars there, and pretty soon you're talking about real money.''

Unfortunately, because of Washington's profligate ways, what was once real money has become little more than a rounding error. The budget resolution passed by the Senate last month recommended the Federal Government spend $9.15 trillion over the next 5 years. That is a 17.3-percent increase from the previous 5 years.

According to a recent Cato report, the Government's fiscal record is nothing to brag about. Over the past 10 years, the Federal domestic expenditures have soared by 79 percent. After adjusting for inflation, this is an enormous 34-percent increase. Over that same period, family income adjusted for inflation has grown by 9 percent. There is the contrast. There is the problem: a 34-percent increase in Government, Federal domestic expenditures; a 9-percent increase in the income of the average family.

So today I provide an opportunity for this body, the Senate of the United States, I provide an opportunity for the Senate to say to the American people, ''Enough is enough.'' Even if you make a bad decision as a free person to smoke, we are not going to decide that we are going to take from you the capacity to spend money and resources on your own family. We are not going to say that the tobacco companies are bad operators and bad companies, and as a result of their problems and their poor conduct, we are going to punish you, the individuals who smoke.

We are not going to provide that 59.4 percent of all the $755 billion to be collected by individuals trapped in the habit of smoking is to be provided by individuals who make less than $30,000. We are not going to continue to inflict that kind of harm on individuals who are low income and compound the problem. Now Government will come in and sweep from them their capacity to provide for their own families.

That is not something that we are interested in doing. We are interested instead of saying we don't really agree with this bill, in saying that everything has to be passed on to the consumer, that as a way of punishing tobacco companies we will take money from consumers. We are going to try to make it very difficult. If a guy smokes a couple of packs a day, we are going to make sure that he spends 800 bucks more a year just for the Government, not to be able to address the needs of his family, not to provide for his family, not to provide for himself. But we are going to just say because tobacco companies have done things that are improper, we are going to punish hard-working American citizens.

My own view is that is a misplaced effort. If we really want to try to make sure that we curtail teen smoking, there are a lot of things we could do. I don't even think this bill makes it illegal for teens to possess tobacco. I don't think it even makes it illegal to possess tobacco in the District of Columbia. This bill doesn't even curtail, in my understanding, doesn't curtail smoking in the Capitol. We criticize Joe Camel, a cartoon character. We criticize a cartoon character for being a role model for young people who want to emulate and smoke. But we don't curtail, I don't believe—and I would be glad to be corrected—I don't think we stop smoking in the U.S. Capitol. In the District of Columbia, we don't make it illegal for teens to possess tobacco. Now, it is virtually uniform around the country that it is illegal to sell tobacco to teens, but there are things we can and ought to do to curtail tobacco use among teens.

And I leave with this amendment, I leave in the bill the penalties on tobacco companies for failure to meet the targets. I simply, with this amendment, take the penalties against consumers out of the bill. I simply do not provide for the punishment of poor American families, working families. I do not provide for their punishment for what the tobacco companies have done. I think it is inappropriate.

So I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. ASHCROFT] proposes an amendment numbered 2427 to amendment numbered 2422.

Mr. ASHCROFT. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the language proposed to be inserted, insert the following:

(1) Amounts equivalent to penalties paid under section 202, including interest thereon.

(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 the expenditures authorized by this Act.

(2) REPAYMENT WITH INTEREST.—Repayable advances made to the trust fund shall be repaid, and interest on such 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 for such purposes.

(3) RATE OF INTEREST.—Interest on advances 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) to be 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 in each calendar year, as provided by appropriations Acts, except that distributions to the States from amounts credited to the State Litigation Settlement Account shall not require further authorization or appropriation and shall be as provided in the Master Settlement Agreement and this Act, and not less than 15 percent of the amounts shall be expended, without further appropriation, notwithstanding any other provision of this Act, from the trust fund for each fiscal year, in the aggregate, for activities under this Act related to—

(1) the prevention of smoking;

(2) education;

(3) State, local, and private control of tobacco product use; and

(4) smoking cessation.

(e) BUDGETARY TREATMENT OF TRUST FUND OPERATIONS.—The receipts and disbursements of the National Tobacco Settlement Trust Fund shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 95 of such Code.

SEC. 402. STATE LITIGATION SETTLEMENT ACCOUNT.

(a) IN GENERAL.—There is established within the trust fund a separate account, to be known as the State Litigation Settlement Account.

(b) TRANSFERS TO ACCOUNT.—From amounts received by the trust fund under section 403, the State Litigation Settlement Account shall be credited with all settlement payments designated for allocation, without further appropriation, among the several States.

(c) REIMBURSEMENT FOR STATE EXPENDITURES.—

(1) PAYMENT.—Amounts credited to the account are available, without further appropriation, in each fiscal year to provide funds to each State to reimburse such State for amounts expended by the State for the treatment of individuals with tobacco-related illnesses or conditions.

(2) AMOUNT.—The amount for which a State is eligible for under subparagraph (A) for a fiscal year shall be based on the Master Settlement Agreement and its ancillary documents in accordance with such agreements thereunder as may be entered into after the date of enactment of this Act by the governors of the several States.

(3) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate.

(4) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(d) PAYMENTS TO BE TRANSFERRED PROMPTLY TO STATES.—The Secretary of the Treasury shall transfer amounts available under subsection (c) to each State as amounts are credited to the State Litigation Settlement Account without undue delay.

( ) PROVISIONS RELATING TO AMOUNTS IN TRUST FUND.—

(1) CERTAIN PROVISIONS NULL AND VOID.—Notwithstanding any other provision of law, the following provisions of this Act shall be null and void and not given effect:

(B) Sections 402 through 406.

Mr. MCCAIN. Mr. President, for the information of all Senators, I have been authorized by the majority leader to announce there will be no further votes this evening. The Senate will remain in session for those Members interested in debating this important issue.

By mid to late morning tomorrow, I intend to move to table the pending Ashcroft amendment and the Kennedy amendment, all in an effort to move this bill along. Again, the next vote should occur around 11 a.m. on Wednesday.

While I have the floor, Mr. President, I make one comment. I am the father of four children. I come from a high-income bracket. I love my children. I believe that low-income Americans love their children, as well. And I have talked to many low-income Americans, both in person and by mail and on talk shows, who have said, ''Senator MCCAIN, I smoke. I wish I didn't smoke. My children are beginning to smoke. Please do everything you can to stop it.''

Mr. President, to believe somehow that low-income families aren't as concerned about their children and whether they are going to smoke or not, frankly, is not something that I agree with, nor I believe is it fair to low-income families all over America. Low-income families in America love their children as I love my children.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 2421

Mr. LAUTENBERG. Mr. President, this obviously is going to be a fairly long debate. We are going to hear about everything from tax policy to love of country to how we deal with our budgets. We are going to hear all kinds of things.

Mr. President, I join with my distinguished friend and colleague from Massachusetts in proposing the $1.50 amendment, if I can call it that, that both he and I have had a longtime interest in. I want to make some comments on the entire bill before I go into the specifics of the $1.50.

Senator KENNEDY has been the leader in all matters of health and concern for young people, always out in the front, helping to defend what is right in our country. I have great respect for him and I am pleased to share this particular interest in reducing teen smoking.

Today we begin consideration of legislation that is long overdue. It tackles one of the most important health issues of our time, because today we begin the questions to finally reform the way tobacco products are sold in this country and the way the tobacco industry operates.

Getting to this point has not been an easy journey. Despite the fact that the tobacco industry has for decades engaged in shameless corporate conduct, the Congress has never acted in a comprehensive way to get this industry under control. However, we have now reached a point where the American people no longer tolerate inaction on this issue.

I have been fighting to protect Americans from the dangers of smoking for over a decade in the U.S. Senate, along with the distinguished Senator from Illinois, Senator DURBIN. We authored the first ban on smoking in airplanes in 1987. Just a few weeks ago, we celebrated the tenth anniversary of the implementation of that legislation.

Frankly, I believe that ban, that opportunity for people to fly and to travel in that close space free of tobacco smoke, was a catalyst for further antitobacco activity. They saw how pleasant it was. When people rode on airplanes, they saw how nice it was to have smoke-free travel, freedom from other people's tobacco smoke. Many who suffered from allergies, or had respiratory problems, or just couldn't endure being trapped in a smoking airplane cabin finally felt free to travel by airplane in what they considered a personally safer environment.

But, despite the wishes of the American people, we had a tough time getting that legislation in place. It was a long, tough battle. We argued. We negotiated. We finally settled for a 2-hour ban, with the promise that we would wait 18 months for studies to come in. But the interest of the public was so overwhelming that we didn't have to wait 18 months. It began to become a cry across the country: Please, if you are going to ban smoking in airplane flights for 2 hours, for goodness sake, if it is a 6-hour flight, give us a break. And we immediately changed what had been a 2-hour ban to a 6-hour ban and now all flights across this country and many across the ocean.

But despite the wishes of the American people, the tobacco industry has been able to use its power and its influence to stop real reform of tobacco industry behavior until this week.

Now, we are poised to finally act in a comprehensive way to tackle the major problems this industry has caused our Nation. First and foremost is the issue of teen tobacco use.

Mr. President, newly released industry documents show how the tobacco industry specifically and deliberately targeted our kids for addiction. They knew what they were doing. They put up fancy drawings and beautiful pictures of healthy people riding horseback and playing sports. They knew what was happening. They knew very well they were creating addiction for

the children. They were seducing them into picking up the smoking habit.

In addition, the industry's very own documents talk about ways to further entrap young smokers into a lifetime of addiction by manipulating the quality of nicotine in these cigarettes. The documents recently revealed also contain strategies on how to spread fake science to confuse their customers about the health effects of tobacco products.

Mr. President, not only did the industry commit these acts but it came before the Congress and lied about it. Now these very same companies have decided that they are going to fight back against the popular will. They are going to fight back against the Congress' final awakening to the evils of smoking and to do something about it. They have decided that they are going to take a chance and spend $50 million or more for deceit with a misleading advertising campaign to stop the Senate action this week. You have seen it on TV. You hear it on the radio. You see it in print: After all, we were willing to pay $500 million. After all, we want to be proper citizens. But the Senate and the House want to take away our right. They want to invade people's lives.

It is for that very reason that we have to act now and pass strong comprehensive tobacco legislation. The Senate must prove to the American people this week that we have broken from the past; we will no longer trade the future of our children for cold, hard tobacco industry campaign cash. This is effectively our Bastille Day. The reign of the tobacco industry on Capitol Hill must end today, now. We have an opportunity to prove to the American people that big tobacco's free ride is over.

Mr. President, there are going to be lots of votes for us this week to prove our good faith.

The chairman of the Commerce Committee, Senator MCCAIN, and the committee itself have given us a foundation to build on. I congratulate them and thank them for this and commend them for all of their hard work.

But we have more heavy lifting to do, because what we see in front of us has to be amended and has to be expanded in order to do the job that we want to see done. Our Nation's leading health experts tell us that we have a way to go this week before this bill should be approved by the U.S. Senate. Names that Americans trust, like Dr. C. Everett Koop, Dr. David Kessler, tell us that this bill needs improvement.

That is why it is imperative that the Senate adopt amendments that will be offered to put some more teeth into this bill. We will have votes this week on the Kennedy-Lautenberg amendment that would call for a $1.50 price increase on a pack of cigarettes to really discourage youth smoking.

We will also vote on whether Congress should provide this industry with special protections on legal liability. Additionally, we will likely vote on look-back surcharges to see whether or not the companies will use all of their skills and knowledge to reduce teen smoking. And we will likely vote on preemption of local laws and on advertising restrictions. These will all be key votes, and the American people will be watching.

I will not make my final decision on this legislation until I see the outcome of these votes and see what difference the amendments make in the quality and the extent of this bill. I hope, Mr. President, we can head into the Memorial Day weekend proud of what we did this week.

As we remember our brave men and women who sacrificed their lives fighting for our country, I ask my colleagues to join the fight to protect our people from premature death and sickness as we would have if a foreign invader was to declare war on us and in 1 year killed more than 400,000 Americans—400,000 Americans. It is more deaths in 1 year than all of the combat deaths in all of the wars fought by Americans in the 20th century. We are looking at World War I, World War II, Korea, Vietnam, and other wars fought in this century. Once again, more Americans die each and every year from tobacco-caused disease than died in combat in all of the wars that I have just mentioned.

So we want to fight back against the attackers, as we should. What if we were invaded by a foreign enemy? Now is the time to respond to a call to arms.

Mr. President, this $1.50 amendment will test whether or not we are serious about cutting teen smoking or whether we are going to once again appease the industry. If we are serious about cutting teen smoking, then we must raise the price of cigarettes by at least $1.50 a pack. We have to get to that level quickly, within 3 years.

I want to point out on this chart what we understand. The source of this is the Department of the Treasury. It says the number of children who will be deterred from smoking based on these prices: A $1.10 increase will stop 3 million kids from picking up the smoking habit; a $1.50 increase will stop 3.75 million children from picking up the smoking habit. We know that once they start—we have seen it on the chart displayed by the Senator from Massachusetts about when people start smoking at a very young age. I know I did. It took me some 25 years to recognize what a foolish thing I was doing. I didn't recognize it until my youngest daughter said one day, ''Daddy, we learned in school today that if you smoke, you will get a black box in your throat, and I love you, and I do not want you to have a black box in your throat. Daddy, please stop smoking.'' Within 3 days I stopped smoking, after numerous attempts.

The number of children whose lives will be saved by the cigarette price increases is 1 million at $1.10; $1.50, 1.25 million people—1.25 million children whose lives will be saved by responding to that pressure from the price increase.

We have heard everything here today about tax increases and how we are taxing those unfortunate people of modest income.

The Senator from Arizona said everybody loves their children just as much regardless of their income class. The fact is we would like, all of us, to see the cessation of smoking or the reduction of smoking among children.

One of the things that happens as we discuss this $1.50-a-pack possibility is that we would then be extracting from those whose use costs us more because of their habit to pay for some of the costs that they incur. If someone wants to use their car more often, they buy more gasoline. They pay a higher price. If they want a bigger house, they pay a higher price. If they want to use more fuel to warm or cool their house, they pay a bigger price. If they use more of the health care system, they should pay a bigger price. It is an unfortunate reality, but smoking costs this country $50 billion a year in increased health costs—$50 billion a year. And we are talking about something that is considerably less of a tax, less of a cost on those companies and the individuals who pick up the smoking habit.

We want to stop people from smoking. Just think about it. We heard talk about the fact that this is a tax increase on hard-working families. Well, hard-working families ought to be interested in the money that they save. Imagine if we stopped people from smoking. Here we say a million and a quarter people. It will cost them over $2,000 a year, or they will save $2,000 a year as a result of dropping the smoking habit. Two packs of cigarettes a day, estimated at the lowest, perhaps $4 a pack, if the $1.50 increase goes into effect. But let's say it is $3 a pack. Three dollars a pack, twice a day; $6 times 7, $42 a week, times 52 weeks a year; over $2,000 a year that poor, hard-working families could very well use to buy other things they need far more than cigarettes.

Smoking among children and teens has reached epidemic proportions. Three thousand children begin smoking each and every day, and a third of them, 1,000, will die prematurely as a result of the smoking habit. Every year we lose over 400,000 Americans to tobacco-related illness and over 90 percent of them started as kids.

The managers' amendment claims to raise the price of a pack of cigarettes $1.10 in 5 years, but the public health community tells us that $1.10 just won't do the job. The goal we have set in Congress is to cut teen smoking in half, and if you examine the $1.10 proposal, it is clear that it doesn't cut it. Independent economists tell us that a $1.10 increase will only result in a 33-percent reduction in teen smoking over 5 years.

Hallelujah, I would love to see that happen—even that. But on the other

hand, these same economists say a $1.50 price increase will result in the 50-percent reduction target in 5 years. What an accomplishment that would be. Imagine that in a few years when those kids who would have started smoking are not smoking. More than 200,000 Americans who would have otherwise died would be alive. Families would not be grief stricken at the loss of someone they care about because of the smoking habit, or watch someone who was a good athlete unable to function, unable to run, unable to breathe without lots of labor because we were in this early stage able to stop teen smoking.

The reason we are not focused on adults so much in this as teen smoking is because it doesn't have the same impact on adult smokers. We have over 40 million people who are addicted to tobacco. I never met anybody who is a smoker who will not tell me about the number of times they stopped and how long. They remember those as key moments in their life: I once stopped for 2 weeks, for 2 solid weeks I didn't have a cigarette. What do you think? And then I was watching the ball game or my friend Charlie at the office had a problem and got sick and I started smoking again. And I will be darned; I just haven't been able to stop. But one of these days I am going to do it, I promise you that. I wish I could.

Talk to people who stand outside buildings all over America who are prohibited by the rules from smoking in the building and you see them puffing away. I was one. I don't make fun of them, I promise you that. See them standing out there in the cold weather freezing to finally get that puff on the cigarette.

The other day I took the train from Philadelphia to Newark, and I watched a fellow get off the train, light up quickly on the platform, take two or three drags on the cigarette and chuck it and get back in the train. He is not happy with his habit. He may have been happy to have a puff on that cigarette, but I assure you, when that man thinks about what he is doing, he is not happy that he is an addict. No addict, whether illegal drugs or tobacco, is happy with the condition, but they are committed to it.

And so our mission is to stop them before they start, because it is unrealistic to say stop after they have been doing it for a long time. You can never get to it. So what we will do is make an investment now that will start to pay off 5 years from now, 10 years from now, 20 years from now, when we will see our costs for health care and our costs for lost productivity will diminish considerably, and maybe even end, and we will be looking at a Nation that is considerably healthier.

Why should the Senate stand for half measures? Public health organizations and Drs. Koop and Kessler agree that the price of tobacco products must be increased by at least $1.50 in 3 years, and be continuously indexed, by the way, for inflation. Otherwise, we will fall short of meeting our goals of cutting teen smoking in half.

A variety of factors contribute to a teenager's decision to try that first cigarette or chew that first bit of spit tobacco, as we call it. But the price of tobacco is a critical factor. The higher the price, the less likely the child will be to continue to use tobacco.

Again, the U.S. Department of the Treasury says it—the number of children who will be deterred from smoking if we adjust the prices, according to this chart.

I would also like to ask my colleagues not to be fooled by the industry's deceptions that this price increase will bankrupt them. I remind my colleagues that these are the same folks who testified before Congress under oath that nicotine is not addictive. The tobacco industry made $7.2 billion in profit in 1997. And according to an MIT analysis, a $1.50 price increase would not bankrupt the industry by any stretch of the truth or imagination. In fact, the MIT analysis shows an industry profit of $5.2 billion with a $1.50 price increase.

And further, the industry claims that this price increase will create a black market. Well, this black market looks like a red herring to me, I must tell you. We can pass tough antismuggling laws that will prevent a black market. It doesn't, unfortunately, hurt the tobacco companies if their product is sold in a black market. I want everybody to keep that in mind. If company X sells its products and it gets by without the $1.50 user fee imposed on it, they still get the same profit back in Winston Salem, NC, or wherever they are based. So that black market, so to speak, is not something that, frankly, I see making the tobacco companies very unhappy. In fact, the managers' amendment includes antismuggling language that I coauthored. This language is tough. It will go a long way towards cracking down on smuggling—the same way we have cracked down on alcohol smuggling in recent years.

This $1.50 proposal has bipartisan support. I offered it as a sense of the Senate in the Budget Committee, and it passed overwhelmingly. It passed in the Budget Committee. A similar proposal passed with a bipartisan vote last week in the Finance Committee. There is a bipartisan Hansen-Meehan bill in the House that also increased the price by $1.50 over 3 years.

Mr. President, this amendment has bipartisan support because the American people strongly support it. A recent poll by the American Cancer Society showed that 59 percent of the American people support a $1.50 price increase—people who are going to be affected by it.

I think it is time for the full Senate to pass a $1.50 price increase and protect our children once and for all. We are going to see it in the voting. That voting is a public document that everyone can see, a public action that everyone can see.

I am going to close in just a couple of minutes here. I listened to the debate. I listened to the cries that this is just another scheme, a scheme to tax the public so those of us who are responsible for legislation and operation of Government can spend the money. That is the biggest hoax in the world.

Nobody, this Senator or any other Senator, on the right, on the left, in the Republican Party or the Democrats, enjoys spending the public's money. That is pure baloney, as we say in polite circles. We don't like taxing anybody. But people who smoke cause this society to spend $100 billion a year as a result of their smoking. We have the unfortunate experience of seeing a loved one die, or with a tracheotomy, as we saw last week at a hearing here. We heard a woman who was induced to represent a tobacco company as a model when she was 17 years old, and she said her employer said unless you smoke also, actually smoke, you don't quite have the real action that shows the satisfaction a smoker gets. And now she smokes through a tracheotomy in her throat. She was barely able to utter the sounds. It was pathetic, Mr. President, to see that happen.

I also had the benefit of a hearing where we had a famous male model for one of the tobacco companies who said he is dying. He said he was so ashamed of himself, when he went into the doctors office, went in for surgery, and the doctor said to him, ''For goodness sake, don't smoke for a couple of weeks before you get to the hospital, whatever you do,'' and his doctor caught him smoking in the waiting room, waiting to be admitted to the hospital so he could have a lung taken out. That is how addicting tobacco is.

We ought not feel sorry for the people who run the tobacco companies. They ought to be ashamed. They ought to pay the price. It is time for them to come clean with the American public and say, ''OK, we have done it wrong. We have made a mistake. We want to cooperate.'' Instead, they are mounting all kinds of spurious campaigns to try to deceive the public that the Senate, that the Congress, is trying to hurt them or hurt their families. It is not true. We ought not let them get away with it. So when I hear the stories, oh, we are going to just tax the American public, and a recitation of when these tax increases go through—I would like to recite just a few numbers in response.

There has never been a time in the history of this country when the economy is better than it is these very days, and it is better because we took some specific actions. It is better because we had a balanced budget on our agenda, and we approved one last year. I am a member of the Budget Committee and we saw it happen. We decided we were going to control our expenses. And the economy is booming. Look at the stock market. Look at interest rates—low; stock market, high. Interest rates, low; mortgage rates, low;

home ownership high—we have not ever seen that kind of affluence in this society.

Everybody is not participating. I am not saying that at all. But to suggest that we have done things wrong in this country, in the management of this economy, and that what we have done is just picked people's pockets and taken the money and thrown it away is nonsense and the public will see through it. They are not going to believe that stuff. They have heard it before. They have seen it before. They know their children have a chance at a good job, they have a chance to get an education, that health care for their grandparents is going to be more assured, Social Security has moved up in its solvency— 2032 is the prospect. It is incredible. People can feel a lot better about their lives.

And longevity? Mr. President, I hate to admit how old I am, but I can tell you if you want to run or jog or go skiing or do all the other things, I am there, because there is an opportunity in this country to have a full life as one ages. I was a soldier in World War II. I served 3 years in the Army. I count my blessings every day for the good health I have seen and the five—and sixth grandchild, maybe today or maybe tomorrow that child will arrive. I can't wait for my daughter to say, ''Hey, Dad, we have a new one in the family.'' I can assure you that child will never smoke if the parents or the grandparents have anything to say about it.

We want our children to be healthy. That is the purpose of this. It is to bring health to the younger part of our society so that, as they age they, too, can enjoy their grandchildren, enjoy their life, be in good health, do whatever they want to do—run, dance, whatever, and feel good about the life they have led. That is the kind of America we have today. That is the kind of America that developed because it had leadership and a willingness to pay the price with some tough votes, some which I didn't make that I wish I had.

So I want to see us pass this to tell the American people we are finished fooling around. We mean it when we say we want to stop teen smoking. We mean it when we say we are going to eliminate this scourge from our society. And we mean it when we stand up here and we vote and we say: OK, let the public see how we are doing it.

I yield the floor.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank my colleagues, Senator KENNEDY and Senator LAUTENBERG, for offering this important amendment. I would like to start by answering some of what our colleague from Missouri, Senator ASHCROFT, was referring to in terms of tax increases. The Senator from Missouri, Senator ASHCROFT, was referring to tax increases that have occurred. He was discussing what he termed the very high tax rates we currently face.

I wanted to bring some historical perspective to that question. This chart shows the outlays of the Federal Government in blue, the receipts of the Federal Government in red, over the last 20 years. As one can see, the spending of the Federal Government as a percentage of our national income has been coming down since President Clinton came into office. Spending has been coming down. Yes, revenue has been going up. And the result has been balanced budgets. That is how you balance a budget. We had $290 billion deficits, and it required cutting spending and, yes, revenue coming up to balance the budget.

We heard a lot of talk about balancing the budget before the 1993 budget deal was passed that, in fact, cut spending and, yes, raised revenue to balance the budget. But what happened? All we got was rhetoric. Let's just look at the record here. If we want to start talking about budgets and deficits, if that is what this debate is going to be about, let's have the debate. Here is what happened under President Reagan. The deficit skyrocketed. We had a lot of rhetoric about balancing the budget, but what we got were a lot of deficits, a lot of red ink, tripling the national debt. What we got under President Bush was even worse. The deficit nearly doubled from already high levels.

Now, what happened when President Clinton and the Democrats passed a budget plan to reduce the deficit? Yes, we did cut spending. Yes, we did raise revenue from the wealthiest 1.5 percent of the people in this country to balance the budget. And that is what has triggered this economic resurgence in this country—that is what I believe. I think the record is absolutely clear. Here are the facts. The deficit each and every year came down after we passed that 1993 budget plan, and now they are actually talking about budget surpluses this year.

That is the record. Those are the facts. But it doesn't tell the full story. Because while revenues went up, overall revenues went up, what happened to the individual tax burden—the individual tax burden? This shows, in 1984, the tax burden for a family of four with a median income level of $54,900 in 1999.

This is income plus payroll tax burden. These are the Federal taxes people are paying. In 1984, that burden on a family of four was 17 percent of their income. In 1999, it will be 15.1 percent. The tax burden on a family of four at the median income in this country has gone down. It has gone down, because while revenues are up, we have changed the distribution by giving targeted tax relief to moderate-income people.

That was our plan. That is what passed. That is what has made that difference in the lives of American families. Their tax burden has gone down, looking at the income and payroll taxes that they pay.

By the way, these are not KENT CONRAD's figures, these are the figures of the U.S. Treasury Department. That is for a family of four earning about $55,000 next year. That is what their tax burden is going to be.

For a family of four at half the median income, at $27,450, their tax burden will have been cut in half. These are facts. In 1984, a family of four earning $27,450 paid 13.2 percent. In 1999, they are going to pay 6.5 percent. Their tax burden, income and payroll taxes combined, has been cut in half. Now, those are facts.

Let's start talking about the issue that is in front of us.

The tobacco industry has a history of making statements that, frankly, are false. I don't know how else to say it. I don't know how to say it diplomatically when somebody is saying something that just ''ain't'' so. Let's look at the record.

I talk about these as the top 10 tobacco tall tales and the truths.

Tall tale No. 1: They came before Congress and they said tobacco has no ill health effects.

The truth: This is from their own documents. This is a 1950s Hill and Knowlton memo quoting an unnamed tobacco company research director. And he said:

> Boy, wouldn't it be wonderful if our company was first to produce a cancer-free cigarette. What we could do to the competition.

This is the industry that says their products cause no ill health effects.

Tall tale No. 2: Tobacco has no ill health effects.

Truth: From a 1978 Brown and Williamson document:

> Very few customers are aware of the effects of nicotine, i.e., its addictive nature and that nicotine is a poison.

These are the industry's own words. This is why this industry has no credibility anymore, when they come up with all this scare talk about black markets and bankruptcy and all the rest. And we will get to those issues one by one. This is their record for credibility.

Tall tale No. 3: Nicotine is not addictive, they told the American people.

The truth: From their own document, a 1972 research planning memo by R.J. Reynolds Tobacco Company researcher Claude Teague:

> Happily for the tobacco industry, nicotine is both habituating—
>
> Addictive—
>
> and unique in its variety of physiological actions.

That is tall tale No. 3.

Tall tale No. 4: Again, the industry says nicotine is not addictive.

This is from a 1992 memo from Barbara Reuter, director of portfolio management for Philip Morris' domestic tobacco business:

> Different people smoke cigarettes for different reasons. But, the primary reason is to deliver nicotine into their bodies. Similar organic chemicals include nicotine, quinine, cocaine, atropine and morphine.

I don't know how these guys can run around the country saying their products aren't addictive, which their own

documents—which we only received through the disclosure of the lawsuit in Minnesota—reveal that they know perfectly well they are addictive. They have known it a long time, and they have run around the country saying things that just aren't so. That is tall tale No. 4.

Tall tale No. 5: Tobacco companies did not manipulate nicotine levels.

The truth, from a 1991 R.J. Reynolds report:

We are basically in the nicotine business. . . . Effective control of nicotine in our products should equate to a significant product performance and cost advantage.

They are in the nicotine business, and nicotine is addictive. Their previous document, it is like cocaine, it is like morphine—who are they kidding? We know better. We have read their documents. That is the problem with the credibility of this industry. We have now actually had a chance to read their documents that they had hidden away for so long.

This is tall tale No. 6: Tobacco companies did not manipulate nicotine levels.

The truth can be found in a 1984 British-American Tobacco memo:

Irrespective of the ethics involved—

That is an interesting way to begin a memo—

Irrespective of the ethics involved, we should develop alternative designs (that do not invite obvious criticism)—

You've got to love these guys—

which will allow the smoker to obtain significant enhanced deliveries of [nicotine] should he so wish.

''Yeah, let's go out and give them double doses of nicotine so we hook them even further.''

Tall tale No. 7: Tobacco companies don't market to children.

They came up to Congress, and they said, ''We don't target children. We wouldn't do that.''

Here is a 1978 memo from a Lorillard tobacco executive:

The base of our businesses are high school students.

They don't target kids? What is that? That is their own words in their own documents. Of course, they were hidden away a long time, but now that we have them, we know what these folks have been up to. We know what these companies have been up to.

Tall tale No. 8: Again, their claim tobacco companies don't market to children.

Let's just look at their own words again. A 1976 R.J. Reynolds research department forecast:

Evidence is now available to indicate that the 14- to 18-year-old age group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term.

I don't know what could be more clear than the industry's own words.

Tall tale No. 9: Again, their claim they don't market to children.

This is from a 1975 report from Philip Morris researcher Myron Johnston:

Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers, 15- to 19-years-old. My own data shows even higher Marlboro market penetration among 15- to 17-year-olds.''

These are the industry's words. These are their words. This is their credibility that they have shredded. I don't know how many more examples we need to understand that this industry comes before us and they don't have clean hands. They don't come here with credibility, because they have undermined their own credibility with their statements of the past.

Tall tale No. 10: Again, their claim tobacco companies don't market to children.

This is from a Brown and Williamson document.

The truth:

The studies reported on youngsters' motivation for starting their brand preferences, as well as the starting behavior of children as young as 5 years old—

Five years old—

the studies examined young smokers' attitudes toward ''addiction'' and contain multiple references to how very young smokers at first believe they cannot become addicted, only to later discover, to their regret, that they are.

Well, it seems to me the record on the credibility of this industry is quite clear.

So that brings us to the question of this amendment. And the importance of this amendment has everything to do with reducing youth smoking. That really is the reason for this amendment, because we have held over 24 hearings in our task force and we have heard repeatedly from the experts. And we have looked at the evidence.

The evidence shows, first of all, that the percentage of teens who smoked in the past month is going up. It has gone from 28 percent of 12th graders in 1991 to this year, 36 percent. The pattern is the same for 10th graders and 8th graders. Smoking among high school seniors is at unprecedented levels. The percentage of seniors who smoked in the last month: in 1991, it was 28.3 percent; 1997, 36.5 percent. Teenage smoking is going up. Eighth graders, 10th graders, 12th graders, the pattern is the same.

The question before the body is, well, is there any indication that a price increase will change that? And the evidence is overwhelming. Our own Congressional Research Service tells us for every 10-percent increase in price, you will get about a 7-percent reduction in teen smoking; a 10-percent increase in price, a 7-percent reduction in youth smoking.

It is not just the Congressional Research Service. The studies that have been done on the econometrics of demand versus price show the same thing. Dr. Chaloupka did the breakthrough study. He concluded much the same thing as the Congressional Research Service: for every 10-percent increase in price, about a 7-percent reduction in youth usage.

But we do not have to rely on studies. We do not have to look at econometrics analysis and we do not have to listen to the Congressional Research Service. We do not have to listen to Drs. Koop and Kessler. All we have to do is look to our neighbors to the north. Here is what happened there. Youth smoking declined sharply when they saw a significant price increase. This isn't some academic study. This is what happened in the real world.

Well, the experts, as I have said, have all testified to precisely that fact. And here is what two of the noted experts tell us about different levels of pricing and what it will mean to reductions in youth smoking.

The Treasury Department tells us over 5 years that under the proposed settlement we would get an 18-percent reduction in youth smoking. Under the legislation before us, by Senator MCCAIN, we get a 32-percent reduction. Under the amendment before us, we would get a 40-percent reduction. Now that is the Treasury Department.

Dr. Chaloupka, who is perhaps the most widely recognized expert because he has studied all the studies, has concluded that the proposed settlement would reduce teen smoking 20 percent, the work by Senator MCCAIN and the bill before us would reduce youth smoking over 5 years by 33 percent, but the amendment before us would reduce youth smoking by 51 percent. These are what the experts are telling us.

I ask unanimous consent to have printed in the RECORD a letter I have just received from Dr. Koop and Dr. Kessler. It is addressed to me.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE ADVISORY COMMITTEE ON
TOBACCO POLICY AND PUBLIC HEALTH,
May 19, 1998.

Hon. KENT CONRAD,
U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: I am writing to urge that you and your colleagues support an amendment to the Commerce Committee bill to raise and accelerate the price increase on tobacco products. I do so because I believe that such an increase will be one of the most effective means available to the Senate to reduce the number of children who start smoking or using spit tobacco.

The Advisory Committee on Tobacco and Public Health Policy that we chaired last summer recommended that the price per pack increase by at least $1.50. This in itself was moderate and realistic: Other studies have recommended that the price increase by $2.00 or more. But the message is clear: Raising prices reduces youth smoking.

It is as simple as this: Price affects demand, and price affects demand steeply among children. Study after study has demonstrated that when prices go up, fewer children start to smoke. This is important because children are not yet addicted and they can refrain from tobacco use. Moreover, there is good evidence that if people do not start smoking by the age of 18, they do not start at all.

And the size of the price hike matters. The most prominent experts on tobacco sales, estimate that a price increase of $1.10 will result in a 34% decline in children smoking, while an increase of $1.50 will result in a 56%

decline. The amendment would result in a 22% further decline in children smoking.

So we urge you to move decisively and to act on the behalf of the Nation's children. Increase the price. Lower the demand. Save children from this addictive and deadly product.

Sincerely,

C. EVERETT KOOP, M.D.
DAVID A. KESSLER, M.D.

Mr. CONRAD. The letter says:

[We are] writing to urge that you and your colleagues support an amendment . . . to raise and accelerate the price increase on tobacco products. [We] do so because [we] believe such an increase will be one of the most effective means available to the Senate to reduce the number of children who start smoking or use spit tobacco.

They go on to point out:

It is as simple as this: Price affects demand, and price affects demand steeply among children. Study after study has demonstrated that when prices go up, fewer children start to smoke. This is important because children are not yet addicted and they can refrain from tobacco use. Moreover, there is good evidence that if people do not start smoking by the age of 18, they do not start at all.

This is Dr. Koop, the former Surgeon General of the United States, and Dr. Kessler, the former head of the Food and Drug Administration. They go on to say:

And the size of the price hike matters. The most prominent experts on tobacco sales, estimate that a price increase of $1.10 will result in a 34% decline in children smoking, while an increase of $1.50 will result in a 56% decline. The amendment would result in a 22% further decline in children smoking.

That is from Dr. Koop and Dr. Kessler, men who have served both Republican administrations and Democratic administrations, telling us to support this amendment.

Now, what does it mean when we talk about more teenagers not smoking? What does it mean in terms of lives? Well, here is what it means: A $1.50 price means 2.7 million additional teenagers not smoking, that is over the bill before us. And it means 800,000 children over time not dying because of the use of tobacco products.

What we are talking about in this amendment is not just dollars and cents. It is much more important than that. It is children's lives. We are talking about a vote that means 800,000 more people will live if we pass it. So the choice before this body is really very simple: Do you want 800,000 more people to live or do you want them to die?

This is going to be an important vote and an important question before every Member of this Senate. I hope it is on everybody's conscience tonight: What are we going to do? How are we going to vote? What difference are we going to make? What are we going to say? Are we going to save 800,000 people—800,000 children—or are we going to condemn them to death by using the only legal product in America, when used as intended by the manufacturer, that addicts and kills its customers?

Mr. President, 400,000 people are going to die this year because of tobacco-related illnesses. It is by far and away the biggest health threat that is controllable. So this vote tomorrow is going to be a vote on 800,000 American lives. Are we going to save them? Or are we going to condemn them to death? And it is an awful death.

At hearing after hearing we have heard the stories of those who have been through the agonizing experience of being told they are dying of cancer. The last hearing we had we had a man who had been a Winston model. Now he has lung cancer. We had a woman who had been a Lucky Strike spokesperson, and by the terms of her contract was required to start smoking. Now she speaks through a voice box.

Over and over, we had the testimony of people, the devastation of using tobacco products, what it has meant to their families and to themselves.

I can remember very well being in New Jersey at a hearing Senator LAUTENBERG organized. We had a young woman there named Gina Seagraves. And she testified telling of the effect on her family of the loss of her mother at an early age, how it devastated their family. She broke down and cried. And she said, ''Please have the courage to stand up to the tobacco companies and do what you can to keep kids from getting hooked.''

Well, that is what this debate is about. That is what this vote is about.

And when the industry says, ''Well, you're going to bankrupt us,'' here is what the experts at the Treasury—the secretary for Financial Markets testified before our task force. And I quote, ''We do not believe that the proposed legislation will materially affect the industry's risk of insolvency.''

He went on and said in the very next sentence, ''Even under conservative assumptions with respect to price, domestic sales volume, and operating margins, the tobacco industry will remain very profitable.'' They are not going bankrupt. They are going to have their profits nicked a little bit. They are not going bankrupt.

In fact, here is what is going to happen to them. When you do a financial analysis of these companies—this was done by the U.S. Treasury Department—under a $1.10 increase, their profits in the year 2003 will be $5 billion. If, instead, we raise the price to $1.50, their profits will be $4.3 billion in the year 2003. They are not going bankrupt.

That is flawed. They run around the country saying they will be bankrupted. Every objective analyst has said they are not going bankrupt. Their profits will be somewhat reduced, but they will still enjoy massive profits. If fact, this industry is three times as profitable as the average consumer goods industry in America today. Their profit margins are 30 percent. The average consumer goods company has a 10 percent margin.

Let's not cry any crocodile tears for this industry. When they come before us and say they will be bankrupted by $1.10 under the McCain bill or $1.50 under the Kennedy-Lautenberg amendment, they are not telling the truth, just like they didn't tell the truth when they said their products didn't cause health problems, just like they didn't tell the truth when they said their products weren't addictive, just like they didn't tell the truth when they said they didn't market to kids, just like they didn't tell the truth when they said these products were not manipulated to further addict young people.

Look, the record is clear on every issue: They are not telling the American people the full truth.

When we investigate this question further, they say it will bankrupt them. They say it will create this massive black market. Let's look. Let's look at where we fit in terms of tax and prices and where the rest of the industrialized world fits in.

This chart came out of the Washington Post last Saturday. These are not my numbers; these are from the Washington Post last Saturday. Prices in Norway on a pack are well over $6, about $7 a pack in Norway. In Britain, prices are about $5 a pack; in Denmark, just under $5 a pack; in Finland, just under $5 a pack; in New Zealand, about $4.20 a pack; in France, about $3.75 a pack; in Canada, about $3.50 a pack; in the Netherlands, about $3.30 a pack; in Singapore, nearly $4 a pack; in Brazil, Thailand, and the United States, under $2. Our average price, about $1.94.

So they talk about this massive black market. How is it that these countries that have much higher prices don't have much of a black market problem? And even if we added $1.10 to $1.94—which is in the McCain bill, taking it to $3.04—we would be well below most of the rest of the industrialized world in terms of a price. Even if we had $1.50, we would be well below the average price in the rest of the industrialized world.

Again on this question of black market activity, we had an international expert before our task force. He provided us with this chart. It showed the price of cigarettes and the level of smuggling in the countries of the European Union. It was a very, very interesting report. This man is an international consultant to countries on how to combat smoking. Here is what his report shows. Countries with high smuggling levels are in red; medium are in yellow; low smuggling rates are in green. On this axis, we have the price per pack.

What you find is very interesting. The countries with the highest prices have the least smuggling. The countries with lower prices have the smuggling problem. Spain has the lowest price, yet it has the highest smuggling problem of any country in Europe. Portugal has a medium level of smuggling and has among the lowest prices. You can see right up the line. But the countries with the highest prices have the lowest rates of smuggling—France, Ireland, U.K., Finland, Denmark.

Now, these guys come around and say there will be this massive black market—massive black market. It hasn't developed in these other countries in the European Union that have much higher prices than we do. Why not? Because they have control mechanisms. They have labeling. They have licensing of those who sell.

Here is what the Treasury Department, Larry Summers, Deputy Secretary, said just at the end of last month: ''The black market can and should be minimized through careful legislation.'' He said, ''By closing the distribution chain for tobacco products, we will be able to ensure that these products flow through legitimate channels and effectively police any leakages that do take place.''

I close as I began. This is a question of saving children's lives. This vote tomorrow is a question of, do we save 800,000 lives or don't we? A very simple choice—a profound choice, but it is very simple. That is what this vote will be tomorrow. Are we going to keep an additional 2.7 million kids from taking up the habit of smoking? That translates into 800,000 lives saved. Or do we miss the opportunity to throw those kids a lifeline and prevent them from taking up a habit that will addict them, that will create disease in them, and that will ultimately kill a third of them? That is the record.

The factual base could not be more clear. Every health expert that came before our task force said that is the issue. That is why Dr. Koop and Dr. Kessler have written us this day and urged us to have the courage to act. I hope our colleagues will have the courage to act.

I want to commend Senator MCCAIN. I want to commend Senator KERRY and the other Members of the Commerce Committee who have done a Herculean job to get us an excellent package to begin deliberations on. They have done a superb job and have shown remarkable public courage. I think every American should stand up and commend them for what they have done. They have brought to this floor the most sweeping, the most comprehensive, the most profound bill in terms of tobacco policy we have ever had before us. They have done it against long odds. We are in their debt. But it is also true we have an opportunity to make this bill somewhat better. I hope we take that chance.

I yield the floor.

Mr. MCCAIN. I want to thank the Senator from North Dakota for not only his kind remarks but for the enormous contributions he has made to this effort. He has worked tirelessly. He has appeared with our committee—not before our committee, but with our committee, where we had one of the most stimulating, I think, dialog and exchange of views since I have been a member of that committee.

I want to thank him. I know there will continue to be areas where we are not in agreement. The fact is, we disagree very agreeably.

I also want to mention again our friends, the attorneys general who began this process. Forty of them settled a suit with the industry back on June 20. This legislation that we are considering now is a direct result of that initial effort on their part. They have been extremely helpful as we moved this process along.

It is my understanding that the Senator from Massachusetts has agreed to conclude his remarks after the wrap-up. Is that correct?

Mr. KENNEDY. That is correct.

Mr. MCCAIN. I yield the floor.

Mr. KERRY. I thank the Chair. I will be very brief. I join in thanking Senator CONRAD for his very generous comments about the Commerce Committee and about Senator MCCAIN's and my efforts in it.

The truth is that so much of the energy of the Senate has been focused as a result of Senator CONRAD's leadership. The task force effort that he put together was really exemplary. It reached every corner of every community that has anything to do with this issue. It is one of the most thorough and exacting pieces of work that I have seen in the Senate. I think Senator MCCAIN would agree with me that there are significant components of the product that has been brought to the floor as a result of his efforts and leadership and his vision about this issue. So I think the quality of the presentation he just made to the Senate and to the country is a tribute to the groundwork he has done in order to get us here.

Likewise, for years, my colleague from Massachusetts, the senior Senator from Massachusetts, has been at the forefront of all of the health issues with respect to children and, particularly, leading the effort with respect to the awareness of tobacco, and his leadership on this has been essential to our ability to have this product. So I thank them for that. I will say more about this particular issue tomorrow.

Very quickly, I might say to the Senator from North Dakota that a few weeks ago there was an article in the New York Times that showed that the smuggling, to the degree there was a problem, has fundamentally been between countries, our cigarettes going out from the United States to Europe as a consequence of the price differential. If anything, as a result of the increase in price, there is a potential of closing that gap, No. 1.

No. 2, with respect to those who worry about Mexico or an infusion into this country, we have an increase in the law enforcement and inspection capacity. Most people in the law enforcement community accept that the returns on heroin and cocaine are so much more significant than the bulk difficulties of transferring cigarettes, and that is a deterrent to those becoming a problem.

Most people want the quality of the American cigarette. They are not particularly prepared to smoke Chinese or other kinds of cigarettes. There are a whole lot of ingredients that work against the smuggling argument, and we will get to that.

I thank the Senator for his efforts.

REGARDING PLACEMENT OF THE REQUIRED INSCRIPTIONS ON QUARTER DOLLARS ISSUED UNDER THE 50 STATES COMMEMORATIVE COIN PROGRAM

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3301, which was received from the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3301) to amend chapter 51 of title 31, U.S. Code to allow the Secretary of the Treasury greater discretion with regard to the placement of the required inscriptions on quarter dollars issued under the 50 States commemorative coin program.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the bill be considered read the third time, and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3301), was considered read the third time, and passed.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, May 18, 1998, the federal debt stood at $5,497,225,027,113.83 (Five trillion, four hundred ninety-seven billion, two hundred twenty-five million, twenty-seven thousand, one hundred thirteen dollars and eighty-three cents).

Five years ago, May 18, 1993, the federal debt stood at $4,284,320,000,000 (Four trillion, two hundred eighty-four billion, three hundred twenty million).

Ten years ago, May 18, 1988, the federal debt stood at $2,523,270,000,000 (Two trillion, five hundred twenty-three billion, two hundred seventy million).

Fifteen years ago, May 18, 1983, the federal debt stood at $1,268,788,000,000 (One trillion, two hundred sixty-eight billion, seven hundred eighty-eight million).

Twenty-five years ago, May 18, 1973, the federal debt stood at $453,126,000,000 (Four hundred fifty-three billion, one hundred twenty-six million) which reflects a debt increase of more than $5 trillion—$5,044,099,027,113.83 (Five trillion, forty-four billion, ninety-nine million, twenty-seven thousand, one hundred thirteen dollars and eighty-three cents) during the past 25 years.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting one nomination which was referred to the Committee on the Judiciary.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

AT 11:55 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that pursuant to the provisions of section 806(c)(1) of Public Law 104–132, the Speaker appoints the following member on the part of the House to the Commission on the Advancement of Federal Law Enforcement to fill the existing vacancy thereon: Mr. Robert E. Sanders of Florida.

ENROLLED BILLS SIGNED

At 2:55 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1065. An act to establish a matching grant program to help State and local jurisdictions purchase armor vests for use by law enforcement departments.

H.R. 3565. An act to amend Part L of the Omnibus Crime control and Safe Streets Act of 1968.

The enrolled bills were signed subsequently by the President pro tempore (Mr. THURMOND).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHAFEE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 8. A bill to reauthorize and amend the Comprehensive Environmental Response, Liability, and Compensation Act of 1980, and for other purposes (Rept. No. 105–192).

By Mr. HELMS, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 172. A resolution congratulating President Chandrika Bandaranaike Kumaratunga and the people of the Democratic Socialist Republic of Sri Lanka on the celebration of 50 years of independence.

S. Res. 188. A resolution expressing the sense of the Senate regarding Israeli membership in a United Nations regional group.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committees were submitted:

By Mr. HELMS, from the Committee on Foreign Relations:

Charles H. Dolan, Jr., of Virginia, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 2000. (Reappointment)

William Joseph Burns, of Pennsylvania, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Hashemite Kingdom of Jordan.

Federal Campaign Contribution Report

Nominee: William J. Burns.

Post: Ambassador to Jordan.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, and donee:

1. Self: William J. Burns, none.
2. Spouse: Lisa A. Carty, none.
3. Children: Elizabeth and Sarah Burns, none.
4. Parents: William F. Burns, $100, 1996, Republican National Committee; Margaret C. Burns, none.
5. Grandparents: William H. and Eleanor Burns (deceased); John and Mary Cassady (deceased).
6. Brothers and spouses: John R. and Ann Davis Burns, none; Robert P. and Vicki Burns, none.
7. Sisters and spouses: Mark E. and Jennifer Burns, none.

Ryan Clark Crocker, of Washington, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Syrian Arab Republic.

Federal Campaign Contribution Report

Nominee: Ryan Clark Crocker.

Post: Ambassador to Syrian Arab Republic.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, and donee:

1. Self: none.
2. Spouse: Christine Barns Crocker, none.
3. Children and spouses: none.
4. Parents: Carol Crocker, none; Howard Crocker (deceased).
5. Grandparents: All deceased since 1926.
6. Brothers and spouses: none.
7. Sisters and spouses: none.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of March 26, 1998 and April 22, 1998, at the end of the Senate proceedings.)

In the Foreign Service nominations beginning Alexander Almasov, and ending James Hammond Williams, which nominations were received by the Senate and appeared in the RECORD of March 26, 1998

In the Foreign Service nominations beginning Joan E. La Rosa, and ending Morton J. Holbrook, III, which nominations were received by the Senate and appeared in the RECORD of March 26, 1998

In the Foreign Service nominations beginning Michael Farbman, and ending Mary C. Pendleton, which nominations were received by the Senate and appeared in the RECORD of April 22, 1998

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GRAMS:

S. 2091. A bill to amend title XVIII of the Social Security Act to ensure medicare reimbursement for certain ambulance services, and to improve the efficiency of the emergency medical system, and for other purposes; to the Committee on Finance.

By Mr. SMITH of Oregon (for himself, Mr. WYDEN, Mr. THOMAS, and Mr. BROWNBACK):

S. 2092. A bill to promote full equality at the United Nations for Israel; to the Committee on Foreign Relations.

By Mr. FEINGOLD:

S. 2093. A bill to provide class size demonstration grants; to the Committee on Labor and Human Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DORGAN (for himself, Mr. KEMPTHORNE, Mr. WYDEN, Mrs. MURRAY, Mr. JOHNSON, Mr. BAUCUS, Mr. CRAIG, Mr. BURNS, Mr. SMITH of Oregon, Mr. CONRAD, Mr. GORTON, Mr. DASCHLE, Mr. ENZI, and Mr. THOMAS):

S. Res. 232. A resolution to express the sense of the Senate that the European Union should waive the penalty for failure to use restitution subsidies for barley to the United States and ensure that restitution or other subsidies are not used for similar sales in the United States and that the President, the United States Trade Representative, and the Secretary of Agriculture should conduct an investigation of and report on the sale and subsidies; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAMS:

S. 2091. A bill to amend title XVIII of the Social Security Act to ensure medicare reimbursement for certain ambulance services, and to improve the efficiency of the emergency medical system, and for other purposes; to the Committee on Finance.

EMERGENCY MEDICAL SERVICES EFFICIENCY ACT OF 1998

Mr. GRAMS. Mr. President, I rise this morning on behalf of all those who serve their fellow citizens through their active participation in the Nation's emergency care system to introduce the Emergency Medical Services Act.

Mr. President, as a Senator who is deeply concerned about the ever-expanding size and scope of the Federal Government, I have long believed Washington is too big, too clumsy and too removed to deal effectively with many of the issues in which it already meddles.

However, I also believe there's an overriding public health interest in ensuring a viable, seamless, nationwide

EMS system. By designating this week as National EMS Week, the Nation recognizes those individual who make the EMS system work.

There is no more appropriate time to reaffirm our commitment to EMS by addressing some of the problems the system is presented with daily.

I have been privileged to get to know the men and women who dedicate their talents to serving others in an emergency. We have together discussed problems within the EMS system and concluded there are areas in which the Federal Government can help.

The original result of our discussions concerning the Federal role in EMS was S. 238, the Emergency Medical Services Act [EMSEA]. When I introduced S. 238 on January 30, 1997, I acknowledged that it wasn't intended to solve all the problems EMS faces; it was merely a first step toward a meaningful national dialog on EMs. Indeed, this first step was a productive one.

Last summer, I assembled EMS and health care leaders in Minnesota, asked them to take another look at the EMSEA, and report back to me with their thoughts. In January, I received a copy of their report.

I was extremely pleased with their efforts and have used those suggestions as the basis for the legislative language comprising the new Emergency Medical Services Efficiency Act I am introducing today.

I have often said that Congress has a tendency to wait until there's a crisis before it acts, but Congress cannot wait until there's a crisis in the EMS system before we take steps to improve it. There is simply too much at stake.

Whether we realize it or not, we depend on and expect the constant readiness of emergency medical services. To ensure that readiness, we need to make efficient and effective efforts to secure the stability of the system.

This has been my focus in redrafting this legislation.

There are many similarities between S. 238 and the new bill I am introducing today.

For instance, we continue to assert that the most important thing we can do to maintain the vitality of the EMS system is to compel the government to reimburse for the services it says it will pay for under Medicare.

In the meetings I have had with ambulance providers, emergency medical technicians emergency physicians, nurses, and other EMS-related personnel, their most common request is to base reimbursement on a ''prudent layperson'' standard, rather than the ultimate diagnosis reached in the emergency room.

While the Balanced Budget Act of 1997 [BBA] contained a provision basing reimbursement for emergency services on the prudent layperson standard, we have yet to see HCFA's interpretation of the provision and whether it will include ambulance services.

I have written letters to HCFA and Senate Finance Committee Chairman WILLIAM ROTH indicating my understanding that ambulance services would be considered part of ''emergency services'' as defined in the BBA.

I have been given no assurances from HCFA that they intend to include ambulance services as part of the ''emergency services'' definition in the balanced budget agreement.

To illustrate how prevalent this problem is, I want to share with you a case my staff worked on relating to Medicare reimbursement for ambulance services. Please keep in mind that this is the fee-for-service Medicare program.

It was back in 1994 that Andrew Bernecker of Braham, MN, was mowing with a power scythe and tractor when he fell. The rotating blades of the scythe severely cut his upper arm. Mr. Bernecker tried to walk toward his home but was too faint from the blood loss, so he crawled the rest of the way.

Afraid that his wife, who was 86 years old at the time, would panic—or worse, have a heart attack—he crawled to the pump and washed as much blood and dirt off as he could. His wife saw him and immediately called 911 for an ambulance.

He was rushed to the hospital where Mr. Bernecker ultimately had orthopedic surgery and spent some time in the intensive care unit.

In response to the bills submitted to Medicare, the Government sent this reply with respect to the ambulance billing:

> Medicare Regulations Provide that certain conditions must be met in order for ambulance services to be covered.
>
> Medicare pays for ambulance services only when the use of any other method of transportation would endanger your health.

The Government denied payment, claiming the ambulance wasn't medically necessary.

Apparently, Medicare believed the man's wife—who was, remember, 86 years old—should have been able to drive him to the hospital for treatment. Mr. and Mrs. Bernecker appealed, but were denied, and they began paying what they could afford each month on the ambulance bill.

After several years of paying $20 a month, they finally paid off the ambulance bill. Medicare however, later reopened the case and reimbursed the Berneckers.

I believe the experience this family had with Medicare's denial of payment for ambulance services happens far too often, and Congress needs to make sure it doesn't happen again.

Another similarity between the two versions of this bill is the creation of a Federal commission on emergency medical services to make recommendations and to help provide input on how Federal regulatory actions affect all types of EMS providers.

EMS needs a seat at the table when health care and other regulatory policy is made.

Few things are more frustrating for ambulance services than trying to navigate and comply with the tangled mess of laws and regulations from the Federal level on down, only to receive either a reimbursement that doesn't cover the costs of providing the service or otherwise a flat denial of the payment.

Mr. President, I came across this chart last year, the chart I have with me on the floor this morning, that demonstrates how a Medicare claim moves from submittal to payment, denial, or write-off by the ambulance provider.

If you look at this chart, I ask you, tell me how a rural ambulance provider who depends on volunteers has the manpower or the expertise to navigate through this entire mess. And, in the event that it is navigated successfully, ambulance services are regularly reimbursed at a level that doesn't even cover their costs.

Now let us talk about how much it costs to run just one ambulance. There is the cost of the dispatcher who remains on the line to give prearrival assistance, the ambulance itself, which costs from $85,000 to $100,000 to put on the road, the radios, beepers, and the cellular telephones used to communicate between the dispatcher, the ambulance, and the hospital, the supplies and equipment in the ambulance, including defibrillators, stretchers, EKG monitors, and bandages, and the two emergency medical technicians or paramedics who both drive the ambulance and provide care to the patient, the vehicle repair, maintenance, and insurance costs, and the liability insurance for the paramedics. As you can see, the list goes on and on.

Yes, the costs can be high, but it is clear to me that, with the uncertainty ambulance providers face out in the field each day, they need to be prepared for every type of injury or condition. Mr. President, that is expensive, but we as consumers expect that in the case of an emergency.

I am convinced those who complain about the high costs of emergency care would be aghast if the ambulance that arrived to care for them in an emergency didn't have the lifesaving equipment needed for their treatment.

Let us be honest with ourselves: We want the quickest and best service when we face an emergency—and the bottom line is that costs money.

Mr. President, many of our political debates in Washington center around how to better prepare for the 21st century.

I have always supported research and efforts to expand the limits of technology and continue to believe technological innovations and advances in biomedical and basic scientific research hold tremendous promise.

Under the new bill I am introducing today, Federal grant programs will be clarified to ensure that EMS agencies are eligible for programs that relate to highway safety, rural development, and tele-health technology.

Emergency medical services have come a long way since the first ambulance services began in Cleveland and New York City way back during the 1860's.

Indeed, the scientific and technological advances have created a new practice of medicine in just 2 short decades, and have dramatically improved the prospects of surviving any serious trauma.

There is reason to believe further advances will have equally meaningful results.

Innovations like tele-health technology may soon allow EMT's, nurses, and paramedics to perform more sophisticated procedures under a physician's supervision via real-time, ambulance-mounted monitors and cameras networked to emergency departments in specific service areas.

By not considering EMS agencies for Federal grant dollars, we may cause significant delays in the application of current technologies. That would be a mistake.

Perhaps the most dramatic departure the reintroduced bill takes from S. 238 related to the designation of a lead Federal agency for EMS.

In August of 1996, the National Highway Traffic and Safety Administration and the Health Resources and Services Administration, Maternal and Child Health Bureau issued their report, ''Emergency Medical Services: Agenda for the Future.''

The report outlined specific ways EMS can be improved, and one of the stated goals was the authorization of a ''lead Federal agency.''

My original legislation instructed the Secretaries of Health and Transportation to confer on and facilitate the transfer of all EMS-related functions to the Department of Transportation.

While we recognized that there would be some who would applaud the notion and others who would berate it, the suggestion compelled people to consider the issue and offer alternative approaches.

The recommendations of the advisory committee and the comments I have received from national groups indicate we have yet to reach a solution to the problematic designation of a lead Federal agency.

As such, under the new legislation, we call for an independent study to determine which existing agency or new board would best serve as the lead Federal entity for EMS.

The concerns expressed to me about designating the Department of Transportation as the lead Federal agency were virtually identical to the concerns about granting lead-agency designation to the Department of Health and Human Services. It just didn't seem to fit.

Therefore, I believe the most appropriate action is to take our time and get it right by conducting this study.

Mr. President, in 1995, there were approximately 100 million visits to emergency departments across the country.

Roughly 20 to 25 percent of those visits started with a call for an ambulance. Each one of those calls is important, especially to those seeking assistance and the responding EMS personnel.

The Nation owes a great deal to the EMS personnel who have dedicated themselves to their profession because they care about people and they want to help those who are suffering.

Nobody gets rich as a professional paramedic, and there is even less compensation as a volunteer. The field of emergency medical services presents many challenges—but offers the reward of knowing you helped someone in need of assistance.

Every year, the American Ambulance Association recognizes EMS personnel across the country for their contributions to the profession, and bestows upon them the Stars of Life Award.

This year, 124 individuals have been chosen by their peers to be honored for demonstrating exceptional kindness and selflessness in performing their duties.

I ask unanimous consent to have printed the 1998 American Ambulance Association Stars of Life honorees in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

1998 STARS OF LIFE HONOREES

Alaska—Monica Helmuth.

Arizona—Jeff Mayhew, Michael Norling, Tammy Smith, Karen Deo, and Sharon R. Featherston.

California—Eva Eveland, John Erie Henry, Chris McGeragle, Nephty Landin, Victor Oseguera, Todd Hombs, Kathy Hester, Les Hutchison, David Pratt, Ted Boorkman, and Paul Maxwell.

Colorado—Kurt Dennison and Jed Swank.

Connecticut—Leonard Sudniek, Michael Pederson, and Alfonso Anglero.

Delaware—Mary McGuire.

Florida—Sean Kelley, Kenneth Warner, David Meck, and John Morrow.

Georgia—Damon Wisdom and Dwayne Friday.

Hawaii—Thomas Sodoma.

Iowa—Elaine Snell and Gary Soderstrom.

Illinois—Julie Burke.

Indiana—Thomas Shoemaker, Rebecca Johnson, and Betty Nickens.

Kansas—Darren Root.

Kentucky—Aaron Gutermuth.

Louisiana—Mark Reis, Wilson ''Billy'' Hughes, Patrice Shows, and Dennis McKinley.

Massachusetts—Warren F. Nicklas, Shawn Payton, Bernard Underwood, Chester ''Chuck'' Cummens, Michael Ward, Dana Gerrard, Priscilla Gerrard, and John Conceison, Jr.

Maryland—James Pirtle, John Dimitriadis, Chad Packard, and Jeff Meyer.

Maine—Paul Knowlton and Doug Chapelle.

Michigan—Nancy Hunger, Craig Veldheer, Jeffrey Buchanan, Timothy Waters, Lydia Paulus, Thomas Scott, and Tonya Prescott.

Minnesota—Daryl Howe, Dan Anger, and John Hall.

Missouri—David Michael, Royce McGuire, and Kirk N. Wattman.

Mississippi—Denise Pilgreen.

North Carolina—Cynthia Seamon, Amy Beinke, Jerry Cornelison, Ronald Corrado, Thomas Wright, Tim Marshburn, and Heather VanRaalte.

Nebraska—Jodi Kozol.

New Jersey—Kimberly Matthews and Michael Maciejczyk.

New Mexico—Gergory Pollard.

Nevada—Mike Denton and Eric Guevin.

New York—Thomas Murphy, Vicki Knarr, Tina Pawlukovich-Cross, Lynn Pulaski, Stacey Wallace, Larry Abbey, Edward Schaeffer, Brent Sala, Dana Peritore, Jean Zambrano, Darrel Grigg, Debra Yandow, John Falgitano, Sam Lubin, and Jim Mazzucca.

Ohio—Kenton Kirkland, Robert Good, and James Drake.

Oklahoma—Terri Farmer.

Oregon—Gregory Sanders, Doug Carlson, and Shawn Hunt.

Pennsylvania—Lisa Mauger, Stephanie Schmoyer, and Christine Webster.

Tennessee—James Quilliams.

Texas—Cory Jeffcoat, Eric Silva, Christine Saucedo, Elaine Tyler, and Brad Redden.

Utah—Marcie Mehl, Charles Cruz, and Patrick Eden.

Virginia—Gerrit ''Bip'' Terhune.

Vermont—Eric Davenport and Paul Jardine.

Washington—George McGibbon and Jim Hogenson.

Mr. GRAMS. Mr. President, in closing I have talked with many EMT's, paramedics, and emergency nurses, and most tell me that they wouldn't think of doing anything else for their chosen career.

So, in honoring them during this National EMS Week, I can think of no better way to recognize their service than through the introduction of legislation that will help them to help others.

I ask my colleagues to support them by supporting the Emergency Medical Services Act.

By Mr. SMITH of Oregon (for himself, Mr. WYDEN, Mr. THOMAS, and Mr. BROWNBACK):

S. 2092. A bill to promote full equality at the United Nations for Israel; to the Committee on Foreign Relations.

EQUALITY FOR ISRAEL AT THE UNITED NATIONS ACT OF 1998

Mr. SMITH of Oregon. Mr. President, today I introduce legislation requiring the Secretary of State report on actions taken by our Ambassador to the United Nations to push the nations of the Western Europe and Others Group (WEOG) to accept Israel into their group.

As you may know, Israel is the only nation among the 185 member states that does not hold membership in a regional group. Membership in a regional group is the prerequisite for any nation to serve on key United Nations bodies such as the Security Council. In order to correct this inequality, I am introducing ''The Equality for Israel at the United Nations Act of 1998.'' I believe that this legislation will prompt our United Nations Representative to make equality for Israel at the United Nations a high priority.

I am proud to be joined by Senators Wyden, Brownback and Thomas as original co-sponsors of this important legislation.

Mr. President, Israel has been a member of the United Nations since

1949, yet it has been continuously precluded from membership in any regional bloc. Most member states from the Middle East would block the vote needed to join their own regional group. The Western Europe and Others Group, however, has accepted countries from other geographical areas—the United States and Australia for example.

Recently United Nations Secretary General Kofi Annan announced that ''It's time to usher in a new era of relations between Israel and the United Nations . . . One way to rectify that new chapter would be to rectify an anomaly: Israel's position as the only Member State that is not a member of one of the regional groups, which means it has no chance of being elected to serve on main organs such as the Security Council or the Economic and Social Council. This anomaly would be corrected.''

I believe it is time to back Secretary General Annan's idea with strong support from the United States Senate and I ask all my colleagues to join me in sending this message to the UN to stop this discrimination against Israel.

Mr. President, I ask unanimous consent to have this legislation printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2092

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Equality for Israel at the United Nations Act of 1998''.

SEC. 2. EFFORTS TO PROMOTE FULL EQUALITY AT THE UNITED NATIONS FOR ISRAEL.

(a) CONGRESSIONAL STATEMENT.—It is the sense of the Congress that—

(1) the United States must help promote an end to the persistent inequity experienced by Israel in the United Nations whereby Israel is the only longstanding member of the organization to be denied acceptance into any of the United Nations regional blocs, which serve as the basis for participation in important activities of the United Nations, including rotating membership on the United Nations Security Council; and

(2) the United States Ambassador to the United Nations should take all steps necessary to ensure Israel's acceptance in the Western Europe and Others Group (WEOG) regional bloc, whose membership includes the non-European countries of Canada, Australia, and the United States.

(b) REPORTS TO CONGRESS.—Not later than 60 days after the date of the enactment of this Act and on a quarterly basis thereafter, the Secretary of State shall submit to the appropriate congressional committees a report which includes the following information (in classified or unclassified form as appropriate):

(1) Actions taken by representatives of the United States, including the United States Ambassador to the United Nations, to encourage the nations of the Western Europe and Others Group (WEOG) to accept Israel into their regional bloc.

(2) Efforts undertaken by the Secretary General of the United Nations to secure Israel's full and equal participation in that body.

(3) Specific responses solicited and received by the Secretary of State from each of the nations of Western Europe and Others Group (WEOG) on their position concerning Israel's acceptance into their organization.

(4) Other measures being undertaken, and which will be undertaken, to ensure and promote Israel's full and equal participation in the United Nations.

By Mr. FEINGOLD:

S. 2093. A bill to provide class size demonstration grants; to the Committee on Labor and Human Resources.

● Mr. FEINGOLD. Mr. President, today I introduce the National SAGE Act. This legislation would authorize a limited number of innovative demonstration grant programs to assist states in their efforts to reduce public school class size and improve learning in the earliest grades.

Mr. President, my own state of Wisconsin has been a leader in the effort to reduce class size in public schools. This legislation is modeled after Wisconsin's successful pilot program, the Student Achievement Guarantee in Education of SAGE program. I am proud that my bill bears the same name as that groundbreaking program.

SAGE is a very appropriate acronym for this legislation, for a sage is a teacher who imparts knowledge and wisdom through direct engagement with his or her students. By providing grants to states trying to reduce class size and implement educational reforms, the National SAGE Act would give students and teachers more opportunities to interact directly. The result will be better teacher morale, better student performance and a happier, more successful school.

Mr. President, I have heard about the need for smaller classes from parents, teachers and school administrators around Wisconsin—including my mother-in-law, who has been a 1st grade teacher for more than 20 years in Waunakee. They all tell me by reducing class size students receive more attention from teachers, and it stands to reason that more attention will translate into more learning.

When asked to evaluate the Wisconsin SAGE program, eight-year teaching veteran Shelia Briggs, of Glendale Elementary School in Madison, Wisconsin said, ''SAGE is just phenomenal. I have kindergarteners who are writing paragraphs. In addition, behavior is a huge benefit of SAGE. With too many little bodies, you will have difficulties. Things are so much more manageable.'' Additionally, second grade teacher Amy Kane says, ''I have taught second grade for nine years and never had this high a percentage of readers. Their writing skills are much higher, and they are able to behave better. I make contact with parents now that I could never make with 34 students.''

Wisconsin's SAGE program has again demonstrated empirically what we know instinctively: students in smaller classes get more attention from teachers, and teachers with fewer students will have more time and energy to devote to each child.

In addition to vital input from these Wisconsin educators, other studies confirm that small class size promotes effective teaching and learning. The leading scientific studies of the impact of small class size, Tennessee's STAR study and its follow up, the Lasting Benefit Study, found that students in small classes in the early years earned significantly higher scores on basic skill tests in all four years and in all types of schools. Follow-up studies have shown that these achievement gains were sustained in later years even if students are placed in larger classes. While I certainly recognize that teacher quality, high expectations an parental involvement are important factors in quality education, the significance of small class size should not be underestimated and cannot be ignored.

Mr. President, Wisconsin is not the only state fighting to reduce class size and implement educational reforms in its public schools. Several states have made small class size a priority, including California, Tennessee, Indiana and Nevada to name a few. My legislation, the National SAGE Act, authorizes $75 million over a period of five years to fund a limited number of demonstration grants to state that create innovative programs to reduce public school class size and improve educational performance, as Wisconsin has done. The Secretary of Education would choose the states to receive funding based on several criteria, including the state's need to reduce class size, the ability of a state education agency to furnish 50 percent of the funds and the degree to which parents, teachers, school administrators and local teacher organizations are consulted in designing the program. The funding for the National SAGE Act would be fully offset by cuts in a wasteful federal program that subsidizes research and development for a huge aircraft manufacturer. That's classic corporate welfare and by eliminating it, we can fund this important SAGE program and still reduce federal spending by more than $1.7 billion over a five year period.

The National SAGE Act also includes a comprehensive research and evaluation component to document the benefit of smaller class size in the earliest grades, and support efforts to reduce class size in schools all over America.

Mr. President, I want to take a moment to say how pleased I am that the Clinton Administration has been pushing the issue of class size to the forefront of the education debate. In January I wrote to the President requesting that he make reducing class size a priority in his FY 99 education budget. I was pleased that the President's budget includes an incentive to help schools provide small classes in the early grades.

While I support the intent of the President's class size proposal, it is not funded. I was uncomfortable with the President's original proposal to fund a

small class size initiative with money from a tobacco settlement that did not yet exist. I am hopeful that Congress will soon pass tobacco legislation, Mr. President, but it is best that we not tie class size legislation to something as controversial and decisive as the tobacco bill.

My fear is that the end of the 105th session will come and Congress will go home having done nothing to assist States trying to reduce class size. My bill approaches this issue more directly, without the baggage of the tobacco bill and without expanding the deficit.

I have been very active on the class size issue over the last year because again—I believe that there is a great national purpose of helping our children to learn by doing all we can to reduce class sizes for children in the earliest grades. While I embrace that national purpose, I do not seek a national mandate for smaller classes. That is not a proper federal goal. Instead, I support smaller classes as a national goal, to be achieved by the local school boards. I think we all can agree that there are no magic remedies to the problems in our public schools and no instant fix to improve learning. However, I believe that targeting federal funds matched on a 50–50 basis by state funding, to assist school districts moving toward smaller class size, is an effective use of federal dollars.

At its core, Mr. President, the small class size issue is really about protecting pubic education. The promising achievements of state efforts in education reform merit strong federal support. We have an obligation to strengthen public schools, because they are the principal institution for educating American children.

Public schools are all-inclusive; they accept all students, regardless of income, race, religion or ethnicity. In introducing the National SAGE Act today, I want to reiterate my strong commitment to quality public education. I am proud of the education I received from Wisconsin's public schools; proud to have graduated from them, and proud that my children attend them. I am committed to helping our public schools improve and adapt and respond to the increased burdens placed on them. I feel strongly that the federal government has a limited—but important role to play in public education.

Mr. President, the Washington Post recently wrote an article about the growing number of families in the Washington area deciding to educate their children at home, rather than participate in the public school system. Mr. President, this trend is not happening in Washington alone, but around the nation.

The Post article states that one of their biggest complaints for families opting out of the public schools is large class size. Parents understand the importance of a low teacher to child ratio in the classroom. They understand the critical difference additional teacher attention can make for their child's educational achievement.

The parent's highlighted in the Post article, Mr. President, are fed up with public school classes made up of twenty-five to thirty students or more, fed up with the lack of individual attention their children are receiving in the classroom; and finally, Mr. President, parents are fed up with the discipline problems created by too many children and too few adults in one classroom.

While I support the choices of families who send their children to public schools or home school their children, the growing trend to move public resources away from the public schools, where more than 90% of our nation's children are educated, is disturbing. Instead of abandoning public education with tax breaks for private schools or spending time and energy designing a Constitutionally flawed voucher program, Congress should be working to ensure that we target federal dollars to meet the needs of local school districts. Those of us who believe a high quality public education system is essential to the productivity of our nation should be very alarmed by this growing effort to move resources away from our public schools.

Mr. President, the federal government has a responsibility during the 105th Congress to take a positive step toward helping school districts reduce class size as part of an overall effort to improve education and ensure that our children have the best chance to excel and reach their full potential. I look forward to continued debate on this issue and hope that my colleagues will consider the National SAGE Act as a reasonable, fiscally responsible proposal to assist states in their efforts to reduce public school class size and improve learning in the earliest grades.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2093

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

SECTION. 1. CLASS SIZE DEMONSTRATION GRANTS.

Subpart 3 of part D of title V of the Higher Education Act of 1965 (20 U.S.C. 1109 et seq.) is amended to read as follows:

"Subpart 3—Class Size Demonstration Grants

"SEC. 561. PURPOSE.

''It is the purpose of this subpart to provide grants to State educational agencies to enable such agencies to determine the benefits, in various school settings, of reducing class size on the educational performance of students and on classroom management and organization.

"SEC. 562. PROGRAM AUTHORIZED.

''(a) PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—The Secretary shall award grants, on a competitive basis, to State educational agencies to pay the Federal share of the costs of conducting demonstration projects that demonstrate methods of reducing class size that may provide information meaningful to other State educational agencies and local educational agencies.

''(2) FEDERAL SHARE.—The Federal share shall be 50 percent.

''(b) RESERVATION.—The Secretary may reserve not more than 5 percent of the amount appropriated under section 565A for each fiscal year to carry out the activities described in section 565.

''(c) SELECTION CRITERIA.—The Secretary shall make grants to State educational agencies on the basis of—

''(1) the need and the ability of a State educational agency to reduce the class size of an elementary school or secondary school served by such agency;

''(2) the ability of a State educational agency to furnish the non-Federal share of the costs of the demonstration project for which assistance is sought;

''(3) the ability of a State educational agency to continue the project for which assistance is sought after the termination of Federal financial assistance under this subpart; and

''(4) the degree to which a State educational agency demonstrates in the application submitted pursuant to section 564 consultation in program implementation and design with parents, teachers, school administrators, and local teacher organizations, where applicable.

''(d) PRIORITY.—In awarding grants under this subpart, the Secretary shall give priority to demonstration projects that involve at-risk students in the earliest grades, including educationally or economically disadvantaged students, students with disabilities, and limited English proficient students.

''(e) GRANTS MUST SUPPLEMENT OTHER FUNDS.—A State educational agency shall use the Federal funds received under this subpart to supplement and not supplant other Federal, State, and local funds available to the State educational agency to carry out the purpose of this subpart.

"SEC. 563. PROGRAM REQUIREMENTS.

''(a) ANNUAL COMPETITION.—In each fiscal year, the Secretary shall announce the factors to be examined in a demonstration project assisted under this subpart. Such factors may include—

''(1) the magnitude of the reduction in class size to be achieved;

''(2) the level of education in which the demonstration projects shall occur;

''(3) the form of the instructional strategy to be demonstrated; and

''(4) the duration of the project.

''(b) RANDOM TECHNIQUES AND APPROPRIATE COMPARISON GROUPS.—Demonstration projects assisted under this subpart shall be designed to utilize randomized techniques or appropriate comparison groups.

"SEC. 564. APPLICATION.

''(a) IN GENERAL.—In order to receive a grant under this subpart, a State educational agency shall submit an application to the Secretary that is responsive to the announcement described in section 563(a), at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

''(b) DURATION.—The Secretary shall encourage State educational agencies to submit applications under this subpart for a period of 5 years.

''(c) CONTENTS.—Each application submitted under subsection (a) shall include—

''(1) a description of the objectives to be attained with the grant funds and the manner in which the grant funds will be used to reduce class size;

''(2) a description of the steps to be taken to achieve target class sizes, including,

where applicable, the acquisition of additional teaching personnel and classroom space;

''(3) a statement of the methods for the collection of data necessary for the evaluation of the impact of class size reduction programs on student achievement;

''(4) an assurance that the State educational agency will pay, from non-Federal sources, the non-Federal share of the costs of the demonstration project for which assistance is sought; and

''(5) such additional assurances as the Secretary may reasonably require.

''(d) SUFFICIENT SIZE AND SCOPE REQUIRED.—The Secretary shall award grants under this subpart only to State educational agencies submitting applications which described projects of sufficient size and scope to contribute to carrying out the purpose of this subpart.

''SEC. 565. EVALUATION AND DISSEMINATION.

''(a) NATIONAL EVALUATION.—The Secretary shall conduct a national evaluation of the demonstration projects assisted under this subpart to determine the costs incurred in achieving the reduction in class size and the effects of the reductions on results, such as student performance in the affected subjects or grades, attendance, discipline, classroom organization, management, and teacher satisfaction and retention.

''(b) COOPERATION.—Each State educational agency receiving a grant under this subpart shall cooperate in the national evaluation described in subsection (a) and shall provide such information to the Secretary as the Secretary may reasonably require.

''(c) REPORTS.—The Secretary shall report to Congress on the results of the evaluation conducted under subsection (a).

''(d) DISSEMINATION.—The Secretary shall widely disseminate information about the results of the class size demonstration projects assisted under this subpart.

''SEC. 565A. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this subpart $15,000,000 for fiscal year 1999 and each of the 4 succeeding fiscal years.''.

SEC. 2. PRIVATE SECTOR FUNDING FOR RESEARCH AND DEVELOPMENT BY NASA RELATING TO AIRCRAFT PERFORMANCE.

The Administrator of the National Aeronautics and Space Administration may not carry out research and development activities relating to the performance of aircraft (including supersonic aircraft and subsonic aircraft) unless the Administrator receives payment in full for such activities from the private sector.●

ADDITIONAL COSPONSORS

S. 374

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 374, a bill to amend title 38, United States Code, to extend eligibility for hospital care and medical services under chapter 17 of that title to veterans who have been awarded the Purple Heart, and for other purposes.

S. 772

At the request of Mr. SPECTER, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 772, a bill to establish an Office of Religious Persecution Monitoring, to provide for the imposition of sanctions against countries engaged in a pattern of religious persecution, and for other purposes.

S. 1251

At the request of Mr. D'AMATO, the name of the Senator from Georgia [Mr. CLELAND] was added as a cosponsor of S. 1251, a bill to amend the Internal Revenue Code of 1986 to increase the amount of private activity bonds which may be issued in each State, and to index such amount for inflation.

S. 1252

At the request of Mr. D'AMATO, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 1252, a bill to amend the Internal Revenue Code of 1986 to increase the amount of low-income housing credits which may be allocated in each State, and to index such amount for inflation.

S. 1464

At the request of Mr. HATCH, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 1464, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, and for other purposes.

S. 1534

At the request of Mr. TORRICELLI, the name of the Senator from Georgia [Mr. CLELAND] was added as a cosponsor of S. 1534, a bill to amend the Higher Education Act of 1965 to delay the commencement of the student loan repayment period for certain students called to active duty in the Armed Forces.

S. 1645

At the request of Mr. ABRAHAM, the name of the Senator from Nebraska [Mr. HAGEL] was added as a cosponsor of S. 1645, a bill to amend title 18, United States Code, to prohibit taking minors across State lines to avoid laws requiring the involvement of parents in abortion decisions.

S. 1700

At the request of Mr. MOYNIHAN, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 1700, a bill to designate the headquarters building of the Department of Housing and Urban Development in Washington, District of Columbia, as the ''Robert C. Weaver Federal Building''.

S. 1758

At the request of Mr. LUGAR, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 1758, a bill to amend the Foreign Assistance Act of 1961 to facilitate protection of tropical forests through debt reduction with developing countries with tropical forests.

S. 1997

At the request of Ms. MIKULSKI, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 1997, a bill to protect the right of a member of a health maintenance organization to receive continuing care at a facility selected by that member.

S. 2054

At the request of Mr. JEFFORDS, the name of the Senator from Georgia [Mr. CLELAND] was added as a cosponsor of S. 2054, a bill to amend title XVIII of the Social Security Act to require the Secretary of Veterans Affairs and the Secretary of Health and Human Services to carry out a model project to provide the Department of Veterans Affairs with Medicare reimbursement for Medicare health-care services provided to certain Medicare-eligible veterans.

S. 2064

At the request of Ms. MIKULSKI, the names of the Senator from Connecticut [Mr. LIEBERMAN], and the Senator from Oregon [Mr. WYDEN] were added as cosponsors of S. 2064, a bill to prohibit the sale of naval vessels and Maritime Administration vessels for purposes of scrapping abroad, to establish a demonstration program relating to the breaking up of such vessels in United States shipyards, and for other purposes.

S. 2084

At the request of Mrs. BOXER, the names of the Senator from New Jersey [Mr. TORRICELLI] and the Senator from California [Mrs. FEINSTEIN] were added as cosponsors of S. 2084, a bill to amend the Outer Continental Shelf Lands Act to direct the Secretary of the Interior to cease mineral leasing activity on submerged land of the Outer Continental Shelf that is adjacent to a coastal State that has declared a moratorium on mineral exploration, development, or production activity in adjacent State waters.

SENATE CONCURRENT RESOLUTION 30

At the request of Mr. HELMS, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Concurrent Resolution 30, a concurrent resolution expressing the sense of the Congress that the Republic of China should be admitted to multilateral economic institutions, including the International Monetary Fund and the International Bank for Reconstruction and Development.

SENATE CONCURRENT RESOLUTION 84

At the request of Mr. KEMPTHORNE, the names of the Senator from Alabama [Mr. SESSIONS], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of Senate Concurrent Resolution 84, a concurrent resolution expressing the sense of Congress that the Government of Costa Rica should take steps to protect the lives of property owners in Costa Rica, and for other purposes.

SENATE RESOLUTION 188

At the request of Mr. MOYNIHAN, the name of the Senator from Alabama [Mr. SESSIONS] was added as a cosponsor of Senate Resolution 188, a resolution expressing the sense of the Senate regarding Israeli membership in a United Nations regional group.

SENATE RESOLUTION 232—EXPRESSING THE SENSE OF THE SENATE RELATIVE TO EUROPEAN UNION SUBSIDIES OF BARLEY

Mr. DORGAN (for himself, Mr. KEMPTHORNE, Mr. WYDEN, Mrs. MURRAY, Mr. JOHNSON, Mr. BAUCUS, Mr. CRAIG, Mr. BURNS, Mr. SMITH of Oregon, Mr. CONRAD, Mr. GORTON, Mr. DASCHLE, Mr. ENZI, and Mr. THOMAS) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 232

Whereas, in an unprecedented sale, the European Union entered into a contract with a United States buyer to sell heavily subsidized European barley to the United States;

Whereas the sale of almost 1,400,000 bushels (30,000 metric tons) of feed barley was shipped from Finland to Stockton, California;

Whereas news of the sale depressed feed barley prices in the California feed barley market;

Whereas, since the market sets national pricing patterns for both feed and malting barley, the sale would mean enormous market losses for barley producers throughout the United States, at a time when the United States barley producers are already suffering from low prices;

Whereas the European restitution subsidies for this barley amounts to $1.11 per bushel ($51 per metric ton);

Whereas the price-depressing effects of this one sale will continue to adversely affect market prices for at least a 9-month period as this grain moves through the United States marketing system;

Whereas this shipment is part of about 2.1 million metric tons of European feed barley that have been approved for restitution subsidies by the European Union this year;

Whereas the availability of the additional subsidized European barley in the international market not only artificially depressed market prices, but also threatens to open new import channels into the United States;

Whereas, as the world's largest feed grain producer and the world's largest exporter of feed grains, the United States does not require imported feed grains;

Whereas, at the same time that subsidized European barley is being imported into the United States, some United States feed grains are prevented from entering European markets under European Union food regulations;

Whereas United States barley growers continue to suffer the negative impacts of the sale, regardless of whether the subsidized European barley was originally targeted for sale into the United States and whether the subsidies comply with the letter of current World Trade Organization export subsidy rules; and

Whereas the sale not only undermines the intent and the spirit of free trade agreements and negotiations, it also moves away from the goals of level playing fields and fairness in trade relationships: Now, therefore, be it

Resolved,

SECTION 1. SENSE OF SENATE ON EXPORT OF EUROPEAN BARLEY TO THE UNITED STATES.

It is sense of the Senate that—

(1) the European Union should—

(A) take immediate steps to waive the penalty for failure to use restitution subsidies for barley exported to the United States; and

(B) establish procedures to ensure that restitution and other subsidies are not used for sales of agricultural commodities to the United States or other countries of North America;

(2) the President of the United States, the United States Trade Representative, and the Secretary of Agriculture should immediately consult with the European Union regarding the sale of European feed barley to the United States in order to avoid any future sale of any European barley to the United States that is based on restitution or other subsidies; and

(3) not later than 60 days after approval of this resolution, the United States Trade Representative and the Secretary of Agriculture should report to Congress on—

(A) the terms and conditions of the sale of European barley to the United States;

(B) the results of the consultations under paragraph (2);

(C) other steps that are being taken or will be taken to address to such situations in the future; and

(D) any additional authorities that may be necessary to carry out subparagraphs (B) and (C).

AMENDMENTS SUBMITTED

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

FAIRCLOTH (AND OTHERS) AMENDMENT NO. 2421

Mr. FAIRCLOTH (for himself, Mr. SESSIONS, and Mr. MCCONNELL) proposed an amendment to the bill (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; as follows:

At the appropriate place, insert the following:

Sec. . Limit on Attorney's Fees.

(a) FEE ARRANGEMENTS.—Subsection (f) shall apply to attorneys' fees provided for or in connection with an action of the type described in such subsection under any—

(1) court order;

(2) settlement agreement;

(3) contingency fee arrangement;

(4) arbitration procedure;

(5) alternative dispute resolution procedure (including mediation);

(6) retainer agreements; or

(7) other arrangement providing for the payment of attorneys' fees.

(b) REQUIREMENTS.—No award of attorneys' fees under any action to which this Act applies shall be made under this Act until the attorneys involved have—

(1) provided to the Congress a detailed time accounting with respect to the work performed in relation to the legal action involved; and

(2) made public disclosure of the time accounting under paragraph (1) and any fee arrangements entered into, or fee arrangements made, with respect to the legal action involved.

(c) APPLICATION.—This section shall apply to fees paid or to be paid to attorneys under any arrangement described in subsection (a)—

(1) who acted on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(2) who acted on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(3) who act at some future time on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(4) who act at some future time on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(5) who acted on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(6) who act at some future time on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(7) who acted on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(8) who act at some future time on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(9) who expended efforts that in whole or in part resulted in or created a model for programs in this Act;

(10) who acted on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection; or

(11) who act at some future time on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection.

(d) REPORT.—

(1) Each attorney whose fees for services already rendered are subject to subsection (a) shall, within 60 days of the date of the enactment of this Act, submit to Committees on the Judiciary of the House of Representatives and the Senate a comprehensive record of the time and expenses for which the fees are to be paid. Such record shall be subject to section 1001(a) of title 18, United States Code.

(2) Each attorney whose fees for services rendered in the future are subject to subsection (a) shall, within 60 days of the completion of the attorney's services, submit to Committees on the Judiciary of the House of Representatives and the Senate a comprehensive record of the time and expenses for which the fees are to be paid. Such record shall be subject to section 1001(a) of title 18, United States Code.

(e) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(f) GENERAL LIMITATION.—Notwithstanding any other provision of law, for each hour spent productively and at risk, separate from the reimbursement of actual out-of-pocket expenses as approved by the court in such action, any attorneys' fees or expenses paid to attorneys for matters described in subsection (c) shall not exceed $250 per hour.

KENNEDY (AND OTHERS) AMENDMENT NO. 2422

Mr. KENNEDY (for himself, Mr. LAUTENBERG, Mr. CONRAD, Mr. GRAHAM, Mr. WELLSTONE, and Mr. HARKIN) proposed an amendment to the bill, S. 1415, supra; as follows:

Beginning in section 402, strike subsection (b) and all that follows through section 403(2) and insert the following:

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the participating tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in paragraph (4) and section 403:

(1) For year 1—$14,400,000,000;

(2) For year 2, an amount equal to the product of $1.00 and the total number of units of tobacco products that were sold in the United States in the previous year.

(3) For year 3, an amount equal to the product of $1.50 and the total number of units of tobacco products that were sold in the United States in the previous year.

(4) For year 4, and each subsequent year, an amount equal to the amount paid in the prior year, multiplied by a ratio in which the numerator is the number of units of tobacco products sold in the prior year and the denominator is the number of units of tobacco products sold in the year before the prior year, adjusted in accordance with section 403.

(c) PAYMENT SCHEDULE; RECONCILIATION.—

(1) ESTIMATED PAYMENTS.—Deposits toward the annual payment liability for each calendar year under subsection (d)(2) shall be made in 3 equal installments due on March 1st, on June 1st, and on August 1st of each year. Each installment shall be equal to one-third of the estimated annual payment liability for that calendar year. Deposits of installments paid after the due date shall accrue interest at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date.

(2) RECONCILIATION.—If the liability for a calendar year under subsection (d)(2) exceeds the deposits made during that calendar year, the manufacturer shall pay the unpaid liability on March 1st of the succeeding calendar year, along with the first deposit for that succeeding year. If the deposits during a calendar year exceed the liability for the calendar year under subsection (d)(2), the manufacturer shall subtract the amount of the excess deposits from its deposit on March 1st of the succeeding calendar year.

(d) APPORTIONMENT OF ANNUAL PAYMENT.—

(1) IN GENERAL.—Each tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). The annual payment is the obligation and responsibility of only those tobacco product manufacturers and their affiliates that directly sell tobacco products in the domestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

(2) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the calendar year. One month after the end of the calendar year, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

(3) CALCULATION OF TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a tobacco product manufacturer shall be equal to that manufacturer's share of adjusted units, taking into account the manufacturer's total production of such units sold in the domestic market. A tobacco product manufacturer's share of adjusted units shall be determined as follows:

(A) UNITS.—A tobacco product manufacturer's number of units shall be determined by counting each—

(i) pack of 20 cigarettes as 1 adjusted unit;

(ii) 1.2 ounces of moist snuff as 0.75 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.35 adjusted units.

(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a smokeless tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units:	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

(C) ADJUSTED UNITS DETERMINED ON TOTAL DOMESTIC PRODUCTION.—For purposes of determining a manufacturer's number of adjusted units under subparagraph (B), a manufacturer's total production of units, whether intended for domestic consumption or export, shall be taken into account.

(D) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a tobacco product manufacturer has more than 200 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

(E) SMOKELESS EQUIVALENCY STUDY.—Not later than January 1, 2003, the Secretary shall submit to the Congress a report detailing the extent to which youths are substituting smokeless tobacco products for cigarettes. If the Secretary determines that significant substitution is occurring, the Secretary shall include in the report recommendations to address substitution, including consideration of modification of the provisions of subparagraph (A).

(e) COMPUTATIONS.—The determinations required by subsection (d) shall be made and certified by the Secretary of Treasury. The parties shall promptly provide the Treasury Department with information sufficient for it to make such determinations.

(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

(1) EXEMPTION .—A manufacturer described in paragraph (3) is exempt from the payments required by subsection (b).

(2) LIMITATION.—Paragraph (1) applies only to assessments on cigarettes to the extent that those cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed to consumers in any calendar year.

(3) TOBACCO PRODUCT MANUFACTURERS TO WHICH SUBSECTION APPLIES.—A tobacco product manufacturer is described in this paragraph if it—

(A) resolved tobacco-related civil actions with more than 25 States before January 1, 1998, through written settlement agreements signed by the attorneys general (or the equivalent chief legal officer if there is no office of attorney general) of those States; and

(B) provides to all other States, not later than December 31, 1998, the opportunity to enter into written settlement agreements that—

(i) are substantially similar to the agreements entered into with those 25 States; and

(ii) provide the other States with annual payment terms that are equivalent to the most favorable annual payment terms of its written settlement agreements with those 25 States.

SEC. 403. ADJUSTMENTS.

The applicable base amount under section 402(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

(1) IN GENERAL.—Beginning with the sixth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 402(b)(4) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the annual increase in the CPI.

(2) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(3) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

AMENDMENT NO. 2423

Add at the end the following new sections:

SEC. ___. CONGRESSIONAL STATEMENT OF POLICY.

It is the sense of Congress that the President should make freedom of religion one of the major objectives of United States foreign policy with respect to China. As part of this policy, the Department of State should raise in every relevant bilateral and multilateral forum the issue of individuals imprisoned, detained, confined, or otherwise harassed by the Chinese Government on religious grounds. In its communications with the Chinese Government, the Department of State should provide specific names of individuals of concern and request a complete and timely response from the Chinese Government regarding the individuals' whereabouts and condition, the charges against them, and sentence imposed. The goal of these official communications should be the expeditious release of all religious prisoners in China and Tibet and the end of the Chinese Government's policy and practice of harassing and repressing religious believers.

SEC. ___. PROHIBITION ON USE OF FUNDS FOR THE PARTICIPATION OF CERTAIN CHINESE OFFICIALS IN CONFERENCES, EXCHANGES, PROGRAMS, AND ACTIVITIES.

(a) PROHIBITION.—Notwithstanding any other provision of law, for fiscal years after fiscal year 1997, no funds appropriated or otherwise made available for the Department of State, the United States Information Agency, and the United States Agency for International Development may be used for the purpose of providing travel expenses and per diem for the participation of nationals of the People's Republic of China described in paragraphs (1) and (2) in conferences, exchanges, programs, and activities:

(1) The head or political secretary of any of the following Chinese Government-created or approved organizations:

(A) The Chinese Buddhist Association.

(B) The Chinese Catholic Patriotic Association.

(C) The National Congress of Catholic Representatives.

(D) The Chinese Catholic Bishops' Conference.

(E) The Chinese Protestant ''Three Self'' Patriotic Movement.

(F) The China Christian Council.

(G) The Chinese Taoist Association.

(H) The Chinese Islamic Association.

(2) Any military or civilian official or employee of the Government of the People's Republic of China who carried out or directed the carrying out of any of the following policies or practices:

(A) Formulating, drafting, or implementing repressive religious policies.

(B) Imprisoning, detaining, or harassing individuals on religious grounds.

(C) Promoting or participating in policies or practices which hinder religious activities or the free expression of religious beliefs.

(b) CERTIFICATION.—

(1) Each Federal agency subject to the prohibition of subsection (a) shall certify in writing to the appropriate congressional committees no later than 120 days after the date of enactment of this Act, and every 90 days thereafter, that it did not pay, either directly or through a contractor or grantee, for travel expenses or per diem of any national of the People's Republic of China described in subsection (a).

(2) Each certification under paragraph (1) shall be supported by the following information:

(A) The name of each employee of any agency of the Government of the People's Republic of China whose travel expenses or per diem were paid by funds of the reporting agency of the United States Government.

(B) The procedures employed by the reporting agency of the United States Government to ascertain whether each individual under subparagraph (A) did or did not participate in activities described in subsection (a)(2).

(C) The reporting agency's basis for concluding that each individual under subparagraph (A) did not participate in such activities.

(c) DEFINITION OF APPROPRIATE CONGRESSIONAL COMMITTEES.—For purposes of this section the term ''appropriate congressional committees'' means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

SEC. ___. CERTAIN OFFICIALS OF THE PEOPLE'S REPUBLIC OF CHINA INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION.

(a) REQUIREMENT.—Notwithstanding any other provision of law, any national of the People's Republic of China described in section ___(a)(2) (except the head of state, the head of government, and cabinet level ministers) shall be ineligible to receive visas and shall be excluded from admission into the United States.

(b) WAIVER.—The President may waive the requirement in subsection (a) with respect to an individual described in such subsection if the President—

(1) determines that it is vital to the national interest to do so; and

(2) provides written notification to the appropriate congressional committees (as defined in section ___(c)) containing a justification for the waiver.

SEC. ___. SUNSET PROVISION.

Sections ___ and ___ shall cease to have effect 4 years after the date of the enactment of this Act.

AMENDMENT NO. 2424

Add at the end the following new title:

TITLE ____—FORCED ABORTIONS IN CHINA

SEC. ___. SHORT TITLE.

This title may be cited as the ''Forced Abortion Condemnation Act''.

SEC. ___. FINDINGS.

Congress makes the following findings:

(1) Forced abortion was rightly denounced as a crime against humanity by the Nuremberg War Crimes Tribunal.

(2) For over 15 years there have been frequent and credible reports of forced abortion and forced sterilization in connection with the population control policies of the People's Republic of China. These reports indicate the following:

(A) Although it is the stated position of the politburo of the Chinese Communist Party that forced abortion and forced sterilization have no role in the population control program, in fact the Communist Chinese Government encourages both forced abortion and forced sterilization through a combination of strictly enforced birth quotas and immunity for local population control officials who engage in coercion. Officials acknowledge that there have been instances of forced abortions and sterilization, and no evidence has been made available to suggest that the perpetrators have been punished.

(B) People's Republic of China population control officials, in cooperation with employers and works unit officials, routinely monitor women's menstrual cycles and subject women who conceive without government authorization to extreme psychological pressure, to harsh economic sanctions, including unpayable fines and loss of employment, and often to physical force.

(C) Official sanctions for giving birth to unauthorized children include fines in amounts several times larger than the per capita annual incomes of residents of the People's Republic of China. In Fujian, for example, the average fine is estimated to be twice a family's gross annual income. Families which cannot pay the fine may be subject to confiscation and destruction of their homes and personal property.

(D) Especially harsh punishments have been inflicted on those whose resistance is motivated by religion. For example, according to a 1995 Amnesty International report, the Catholic inhabitants of 2 villages in Hebei Province were subjected to population control under the slogan ''better to have more graves than one more child''. Enforcement measures included torture, sexual abuse, and the detention of resisters' relatives as hostages.

(E) Forced abortions in Communist China often have taken place in the very late stages of pregnancy.

(F) Since 1994 forced abortion and sterilization have been used in Communist China not only to regulate the number of children, but also to eliminate those who are regarded as defective in accordance with the official eugenic policy known as the ''Natal and Health Care Law''.

SEC. ___. DENIAL OF ENTRY INTO THE UNITED STATES OF PERSONS IN THE PEOPLE'S REPUBLIC OF CHINA ENGAGED IN ENFORCEMENT OF FORCED ABORTION POLICY.

The Secretary of State may not issue any visa to, and the Attorney General may not admit to the United States, any national of the People's Republic of China, including any official of the Communist Party or the Government of the People's Republic of China and its regional, local, and village authorities (except the head of state, the head of government, and cabinet level ministers) who the Secretary finds, based on credible information, has been involved in the establishment or enforcement of population control policies resulting in a woman being forced to undergo an abortion against her free choice, or resulting in a man or woman being forced to undergo sterilization against his or her free choice.

SEC. ___. WAIVER.

The President may waive the requirement contained in section ___ with respect to a national of the People's Republic of China if the President—

(1) determines that it is in the national interest of the United States to do so; and

(2) provides written notification to Congress containing a justification for the waiver.

AMENDMENT NO. 2425

Add at the end the following new title:

TITLE ____—OPPOSITION TO CONCESSIONAL LOANS TO CHINA

SEC. ___. SHORT TITLE.

This title may be cited as the ''Communist China Subsidy Reduction Act of 1998''.

SEC. ___. FINDINGS.

Congress finds that—

(1) the People's Republic of China has enjoyed ready access to international capital through commercial loans, direct investment, sales of securities, bond sales, and foreign aid;

(2) regarding international commercial lending, the People's Republic of China had $48,000,000,000 in loans outstanding from private creditors in 1995;

(3) regarding international direct investment, international direct investment in the People's Republic of China from 1993 through 1995 totaled $97,151,000,000, and in 1996 alone totaled $47,000,000,000;

(4) regarding investment in Chinese securities, the aggregate value of outstanding Chinese securities currently held by Chinese nationals and foreign persons is $175,000,000,000, and from 1993 through 1995 foreign persons invested $10,540,000,000 in Chinese stocks;

(5) regarding investment in Chinese bonds, entities controlled by the Government of the People's Republic of China have issued 75 bonds since 1988, including 36 dollar-denominated bond offerings valued at more than $6,700,000,000, and the total value of long-term Chinese bonds outstanding as of January 1, 1996, was $11,709,000,000;

(6) regarding international assistance, the People's Republic of China received almost $1,000,000,000 in foreign aid grants and an additional $1,566,000,000 in technical assistance grants from 1993 through 1995, and in 1995 received $5,540,000,000 in bilateral assistance loans, including concessional aid, export credits, and related assistance; and

(7) regarding international financial institutions—

(A) despite the People's Republic of China's access to international capital and world financial markets, international financial institutions have annually provided it with more than $4,000,000,000 in loans in recent years, amounting to almost a third of the loan commitments of the Asian Development Bank and 17.1 percent of the loan approvals by the International Bank for Reconstruction and Development in 1995; and

(B) the People's Republic of China borrows more from the International Bank for Reconstruction and Development and the Asian Development Bank than any other country, and loan commitments from those institutions to the People's Republic of China quadrupled from $1,100,000,000 in 1985 to $4,300,000,000 by 1995.

SEC. ___. OPPOSITION OF UNITED STATES TO CONCESSIONAL LOANS TO THE PEOPLE'S REPUBLIC OF CHINA.

Title XV of the International Financial Institutions Act (22 U.S.C. 262o–262o–1) is amended by adding at the end the following:

''SEC. 1503. OPPOSITION OF UNITED STATES TO CONCESSIONAL LOANS TO THE PEOPLE'S REPUBLIC OF CHINA.

''(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Directors at each international financial institution (as defined in section 1702(c)(2) of the International Financial Institutions Act) to use the voice and vote of the United States to oppose the provision by the institution of concessional loans to the People's Republic of China, any citizen or national of the People's Republic of China, or any entity established in the People's Republic of China.

''(b) CONCESSIONAL LOANS DEFINED.—As used in subsection (a), the term 'concessional

loans' means loans with highly subsidized interest rates, grace periods for repayment of 5 years or more, and maturities of 20 years or more.''.

SEC. ___. PRINCIPLES THAT SHOULD BE ADHERED TO BY ANY UNITED STATES NATIONAL CONDUCTING AN INDUSTRIAL COOPERATION PROJECT IN THE PEOPLE'S REPUBLIC OF CHINA.

(a) PURPOSE.—It is the purpose of this section to create principles governing the conduct of industrial cooperation projects of United States nationals in the People's Republic of China.

(b) STATEMENT OF PRINCIPLES.—It is the sense of Congress that any United States national conducting an industrial cooperation project in the People's Republic of China should:

(1) Suspend the use of any goods, wares, articles, or merchandise that the United States national has reason to believe were mined, produced, or manufactured, in whole or in part, by convict labor or forced labor, and refuse to use forced labor in the industrial cooperation project.

(2) Seek to ensure that political or religious views, sex, ethnic or national background, involvement in political activities or nonviolent demonstrations, or association with suspected or known dissidents will not prohibit hiring, lead to harassment, demotion, or dismissal, or in any way affect the status or terms of employment in the industrial cooperation project. The United States national should not discriminate in terms or conditions of employment in the industrial cooperation project against persons with past records of arrest or internal exile for nonviolent protest or membership in unofficial organizations committed to nonviolence.

(3) Ensure that methods of production used in the industrial cooperation project do not pose an unnecessary physical danger to workers and neighboring populations or property, and that the industrial cooperation project does not unnecessarily risk harm to the surrounding environment; and consult with community leaders regarding environmental protection with respect to the industrial cooperation project.

(4) Strive to establish a private business enterprise when involved in an industrial cooperation project with the Government of the People's Republic of China or other state entity.

(5) Discourage any Chinese military presence on the premises of any industrial cooperation projects which involve dual-use technologies.

(6) Undertake to promote freedom of association and assembly among the employees of the United States national. The United States national should protest any infringement by the Government of the People's Republic of China of these freedoms to the International Labor Organization's office in Beijing.

(7) Provide the Department of State with information relevant to the Department's efforts to collect information on prisoners for the purposes of the Prisoner Information Registry, and for other purposes.

(8) Discourage or undertake to prevent compulsory political indoctrination programs from taking place on the premises of the industrial cooperation project.

(9) Promote freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media. To this end, the United States national should raise with appropriate authorities of the Government of the People's Republic of China concerns about restrictions on the free flow of information.

(10) Undertake to prevent harassment of workers who, consistent with the United Nations World Population Plan of Action, decide freely and responsibly the number and spacing of their children; and prohibit compulsory population control activities on the premises of the industrial cooperation project.

(c) PROMOTION OF PRINCIPLES BY OTHER NATIONS.—The Secretary of State shall forward a copy of the principles set forth in subsection (b) to the member nations of the Organization for Economic Cooperation and Development and encourage them to promote principles similar to these principles.

(d) REGISTRATION REQUIREMENT.—

(1) IN GENERAL.—Each United States national conducting an industrial cooperation project in the People's Republic of China shall register with the Secretary of State and indicate that the United States national agrees to implement the principles set forth in subsection (b). No fee shall be required for registration under this subsection.

(2) PREFERENCE FOR PARTICIPATION IN TRADE MISSIONS.—The Secretary of Commerce shall consult the register prior to the selection of private sector participants in any form of trade mission to China, and undertake to involve those United States nationals that have registered their adoption of the principles set forth above.

(e) DEFINITIONS.—As used in this section—

(1) the term ''industrial cooperation project'' refers to a for-profit activity the business operations of which employ more than 25 individuals or have assets greater than $25,000; and

(2) the term ''United States national'' means—

(A) a citizen or national of the United States or a permanent resident of the United States; and

(B) a corporation, partnership, or other business association organized under the laws of the United States, any State or territory thereof, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

SEC. ___. PROMOTION OF EDUCATIONAL, CULTURAL, SCIENTIFIC, AGRICULTURAL, MILITARY, LEGAL, POLITICAL, AND ARTISTIC EXCHANGES BETWEEN THE UNITED STATES AND CHINA.

(a) EXCHANGES BETWEEN THE UNITED STATES AND CHINA.—Agencies of the United States Government which engage in educational, cultural, scientific, agricultural, military, legal, political, and artistic exchanges shall endeavor to initiate or expand such exchange programs with regard to China.

(b) SENSE OF CONGRESS.—It is the sense of Congress that a federally chartered not-for-profit organization should be established to fund exchanges between the United States and China through private donations.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

HUTCHINSON AMENDMENTS NOS. 2423–2426

(Ordered to lie on the table.)

Mr. HUTCHINSON submitted four amendments intended to be proposed by him to the bill (S. 2057) to authorize appropriations for the fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

AMENDMENT NO. 2426

Add at the end the following new titles:

TITLE ___—MONITORING OF HUMAN RIGHTS ABUSES IN CHINA

SEC. ___. SHORT TITLE.

This title may be cited as the ''Political Freedom in China Act of 1998''.

SEC. ___. FINDINGS.

Congress makes the following findings:

(1) Congress concurs in the following conclusions of the United States State Department on human rights in the People's Republic of China in 1996:

(A) The People's Republic of China is ''an authoritarian state'' in which ''citizens lack the freedom to peacefully express opposition to the party-led political system and the right to change their national leaders or form of government''.

(B) The Government of the People's Republic of China has ''continued to commit widespread and well-documented human rights abuses, in violation of internationally accepted norms, stemming from the authorities' intolerance of dissent, fear of unrest, and the absence or inadequacy of laws protecting basic freedoms''.

(C) ''[a]buses include torture and mistreatment of prisoners, forced confessions, and arbitrary and incommunicado detention''.

(D) ''[p]rison conditions remained harsh [and] [t]he Government continued severe restrictions on freedom of speech, the press, assembly, association, religion, privacy, and worker rights''.

(E) ''[a]lthough the Government denies that it holds political prisoners, the number of persons detained or serving sentences for 'counterrevolutionary crimes' or 'crimes against the state', or for peaceful political or religious activities are believed to number in the thousands''.

(F) ''[n]onapproved religious groups, including Protestant and Catholic groups * * * experienced intensified repression''.

(G) ''[s]erious human rights abuses persist in minority areas, including Tibet, Xinjiang, and Inner Mongolia[, and] [c]ontrols on religion and on other fundamental freedoms in these areas have also intensified''.

(H) ''[o]verall in 1996, the authorities stepped up efforts to cut off expressions of protest or criticism. All public dissent against the party and government was effectively silenced by intimidation, exile, the imposition of prison terms, administrative detention, or house arrest. No dissidents were known to be active at year's end.''.

(2) In addition to the State Department, credible independent human rights organizations have documented an increase in repression in China during 1995, and effective destruction of the dissident movement through the arrest and sentencing of the few remaining pro-democracy and human rights activists not already in prison or exile.

(3) Among those were Wang Dan, a student leader of the 1989 pro-democracy protests, sentenced on October 30, 1996, to 11 years in prison on charges of conspiring to subvert the government; Li Hai, sentenced to 9 years in prison on December 18, 1996, for gathering information on the victims of the 1989 crackdown, which according to the court's verdict constituted ''state secrets''; Liu Nianchun, an independent labor organizer, sentenced to 3 years of ''re-education through labor'' on July 4, 1996, due to his activities in connection with a petition campaign calling for human rights reforms; and Ngodrup Phuntsog, a Tibetan national, who was arrested in Tibet in 1987 immediately after he returned from a 2-year trip to India, where the Tibetan government in exile is located, and following a secret trial was convicted by the Government of the People's Republic of

China of espionage on behalf of the ''Ministry of Security of the Dalai clique''.

(4) Many political prisoners are suffering from poor conditions and ill-treatment leading to serious medical and health problems, including—

(A) Wei Jingsheng, sentenced to 14 years in prison on December 13, 1996, for conspiring to subvert the government and for ''communication with hostile foreign organizations and individuals, amassing funds in preparation for overthrowing the government and publishing anti-government articles abroad,'' is currently held in Jile No. 1 Prison (formerly the Nanpu New Life Salt Farm) in Hebei province, where he reportedly suffers from severe high blood pressure and a heart condition, worsened by poor conditions of confinement;

(B) Gao Yu, a journalist sentenced to 6 years in prison in November 1994 and honored by UNESCO in May 1997, has a heart condition; and

(C) Chen Longde, a leading human rights advocate now serving a 3-year reeducation through labor sentence imposed without trial in August 1995, has reportedly been subject to repeated beatings and electric shocks at a labor camp for refusing to confess his guilt.

(5) The People's Republic of China, as a member of the United Nations, is expected to abide by the provisions of the Universal Declaration of Human Rights.

(6) The People's Republic of China is a party to numerous international human rights conventions, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

SEC. ___. CONDUCT OF FOREIGN RELATIONS.

(a) RELEASE OF PRISONERS.—The Secretary of State, in all official meetings with the Government of the People's Republic of China, should request the immediate and unconditional release of Ngodrup Phuntsog and other prisoners of conscience in Tibet, as well as in the People's Republic of China.

(b) ACCESS TO PRISONS.—The Secretary of State should seek access for international humanitarian organizations to Drapchi prison and other prisons in Tibet, as well as in the People's Republic of China, to ensure that prisoners are not being mistreated and are receiving necessary medical treatment.

(c) DIALOGUE ON FUTURE OF TIBET.—The Secretary of State, in all official meetings with the Government of the People's Republic of China, should call on that country to begin serious discussions with the Dalai Lama or his representatives, without preconditions, on the future of Tibet.

SEC. ___. AUTHORIZATION OF APPROPRIATIONS FOR ADDITIONAL PERSONNEL AT DIPLOMATIC POSTS TO MONITOR HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA.

There are authorized to be appropriated to support personnel to monitor political repression in the People's Republic of China in the United States Embassies in Beijing and Kathmandu, as well as the American consulates in Guangzhou, Shanghai, Shenyang, Chengdu, and Hong Kong, $2,200,000 for fiscal year 1998 and $2,200,000 for fiscal year 1999.

SEC. ___. DEMOCRACY BUILDING IN CHINA.

(a) AUTHORIZATION OF APPROPRIATIONS FOR NED.—In addition to such sums as are otherwise authorized to be appropriated for the ''National Endowment for Democracy'' for fiscal years 1998 and 1999, there are authorized to be appropriated for the ''National Endowment for Democracy'' $5,000,000 for fiscal year 1998 and $5,000,000 for fiscal year 1999, which shall be available to promote democracy, civil society, and the development of the rule of law in China.

(b) EAST ASIA-PACIFIC REGIONAL DEMOCRACY FUND.—The Secretary of State shall use funds available in the East Asia-Pacific Regional Democracy Fund to provide grants to nongovernmental organizations to promote democracy, civil society, and the development of the rule of law in China.

SEC. ___. HUMAN RIGHTS IN CHINA.

(a) REPORTS.—Not later than March 30, 1998, and each subsequent year thereafter, the Secretary of State shall submit to the International Relations Committee of the House of Representatives and the Foreign Relations Committee of the Senate an annual report on human rights in China, including religious persecution, the development of democratic institutions, and the rule of law. Reports shall provide information on each region of China.

(b) PRISONER INFORMATION REGISTRY.—The Secretary of State shall establish a Prisoner Information Registry for China which shall provide information on all political prisoners, prisoners of conscience, and prisoners of faith in China. Such information shall include the charges, judicial processes, administrative actions, use of forced labor, incidences of torture, length of imprisonment, physical and health conditions, and other matters related to the incarceration of such prisoners in China. The Secretary of State is authorized to make funds available to nongovernmental organizations presently engaged in monitoring activities regarding Chinese political prisoners to assist in the creation and maintenance of the registry.

SEC. ___. SENSE OF CONGRESS CONCERNING ESTABLISHMENT OF A COMMISSION ON SECURITY AND COOPERATION IN ASIA.

It is the sense of Congress that Congress, the President, and the Secretary of State should work with the governments of other countries to establish a Commission on Security and Cooperation in Asia which would be modeled after the Commission on Security and Cooperation in Europe.

SEC. ___. SENSE OF CONGRESS REGARDING DEMOCRACY IN HONG KONG.

It is the sense of Congress that the people of Hong Kong should continue to have the right and ability to freely elect their legislative representatives, and that the procedure for the conduct of the elections of the first legislature of the Hong Kong Special Administrative Region should be determined by the people of Hong Kong through an election law convention, a referendum, or both.

SEC. ___. SENSE OF CONGRESS RELATING TO ORGAN HARVESTING AND TRANSPLANTING IN THE PEOPLE'S REPUBLIC OF CHINA.

It is the sense of Congress that—

(1) the Government of the People's Republic of China should stop the practice of harvesting and transplanting organs for profit from prisoners that it executes;

(2) the Government of the People's Republic of China should be strongly condemned for such organ harvesting and transplanting practice;

(3) the President should bar from entry into the United States any and all officials of the Government of the People's Republic of China known to be directly involved in such organ harvesting and transplanting practice;

(4) individuals determined to be participating in or otherwise facilitating the sale of such organs in the United States should be prosecuted to the fullest possible extent of the law; and

(5) the appropriate officials in the United States should interview individuals, including doctors, who may have knowledge of such organ harvesting and transplanting practice.

TITLE ___—AGREEMENT ON NUCLEAR COOPERATION

SEC. ___. AMENDMENT TO JOINT RESOLUTION RELATING TO AGREEMENT FOR NUCLEAR COOPERATION.

The joint resolution entitled ''Joint Resolution relating to the approval and implementation of the proposed agreement for nuclear cooperation between the United States and the People's Republic of China (Public Law 99–183; approved December 16, 1985) is amended—

(1) in subsection (b)—

(A) by inserting ''and subject to section 2,'' after ''or any international agreement,''; and

(B) in paragraph (1) by striking ''thirty'' and inserting ''120''; and

(2) by adding at the end the following:

''SEC. 2. (a) ACTION BY CONGRESS TO DISAPPROVE CERTIFICATION.—No license may be issued for the export to the People's Republic of China of any nuclear material, facilities, or components subject to the Agreement, and no approval for the transfer or retransfer to the People's Republic of China of any nuclear material, facilities, or components subject to the Agreement shall be given if, during the 120-day period referred to in subsection (b)(1) of the first section, there is enacted a joint resolution described in subsection (b) of this section.

''(b) DESCRIPTION OF JOINT RESOLUTION.—A joint resolution is described in this subsection if it is a joint resolution which has a provision disapproving the President's certification under subsection (b)(1), or a provision or provisions modifying the manner in which the Agreement is implemented, or both.

''(c) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.—

''(1) REFERENCE TO COMMITTEES.—Joint resolutions—

''(A) may be introduced in either House of Congress by any Member of such House; and

''(B) shall be referred, in the House of Representatives, to the Committee on International Relations and, in the Senate, to the Committee on Foreign Relations.

It shall be in order to amend such joint resolutions in the committees to which they are referred.

''(2) FLOOR CONSIDERATION.—(A) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to joint resolutions described in subsection (b).

''(B) It is not in order for—

''(i) the House of Representatives to consider any joint resolution described in subsection (b) that has not been reported by the Committee on International Relations; and

''(ii) the Senate to consider any joint resolution described in subsection (b) that has not been reported by the Committee on Foreign Relations.

''(c) CONSIDERATION OF SECOND RESOLUTION NOT IN ORDER.—It shall not be in order in either the House of Representatives or the Senate to consider a joint resolution described in subsection (b) (other than a joint resolution described in subsection (b) received from the other House), if that House has previously adopted such a joint resolution.

''(d) PROCEDURES RELATING TO CONFERENCE REPORTS IN THE SENATE.—

''(1) CONSIDERATION.—Consideration in the Senate of the conference report on any joint resolution described in subsection (b), including consideration of all amendments in disagreement (and all amendments thereto), and consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees. Debate on any debatable motion or

appeal related to the conference report shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report.

''(2) DEBATE ON AMENDMENTS IN DISAGREEMENT.—In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment to any amendment in disagreement shall be received unless it is a germane amendment.

''(3) CONSIDERATION OF VETO MESSAGE.—Consideration in the Senate of any veto message with respect to a joint resolution described in subsection (b), including consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.''.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

ASHCROFT AMENDMENT NO. 2427

Mr. ASCHCROFT proposed an amendment to amendment No. 2422 proposed by Mr. KENNEDY to the bill, S. 1415, supra; as follows:

In lieu of the language proposed to be inserted, insert the following:

(1) Amounts equivalent to penalties paid under section 202, including interest thereon.

(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 the expenditures authorized by this Act.

(2) REPAYMENT WITH INTEREST.—Repayable advances made to the trust fund shall be repaid, and interest on such 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 for such purposes.

(3) RATE OF INTEREST.—Interest on advances 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) to be 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 in each calendar year, as provided by appropriations Acts, except that distributions to the States from amounts credited to the State Litigation Settlement Account shall not require further authorization or appropriation and shall be as provided in the Master Settlement Agreement and this Act, and not less than 15 percent of the amounts shall be expended, without further appropriation, notwithstanding any other provision of this Act, from the trust fund for each fiscal year, in the aggregate, for activities under this Act related to—

(1) the prevention of smoking;

(2) education;

(3) State, local, and private control of tobacco product use; and

(4) smoking cessation.

(e) BUDGETARY TREATMENT OF TRUST FUND OPERATIONS.—The receipts and disbursements of the National Tobacco Settlement Trust Fund shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 95 of such Code.

SEC. 402. STATE LITIGATION SETTLEMENT ACCOUNT.

(a) IN GENERAL.—There is established within the trust fund a separate account, to be known as the State Litigation Settlement Account.

(b) TRANSFERS TO ACCOUNT.—From amounts received by the trust fund under section 403, the State Litigation Settlement Account shall be credited with all settlement payments designated for allocation, without further appropriation, among the several States.

(c) REIMBURSEMENT FOR STATE EXPENDITURES.—

(1) PAYMENT.—Amounts credited to the account are available, without further appropriation, in each fiscal year to provide funds to each State to reimburse such State for amounts expended by the State for the treatment of individuals with tobacco-related illnesses or conditions.

(2) AMOUNT.—The amount for which a State is eligible for under subparagraph (A) for a fiscal year shall be based on the Master Settlement Agreement and its ancillary documents in accordance with such agreements thereunder as may be entered into after the date of enactment of this Act by the governors of the several States.

(3) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate.

(4) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(d) PAYMENTS TO BE TRANSFERRED PROMPTLY TO STATES.—The Secretary of the Treasury shall transfer amounts available under subsection (c) to each State as amounts are credited to the State Litigation Settlement Account without undue delay.

( ) PROVISIONS RELATING TO AMOUNTS IN TRUST FUND.—

(1) CERTAIN PROVISIONS NULL AND VOID.—Notwithstanding any other provision of law, the following provisions of this Act shall be null and void and not given effect:

(B) Sections 402 through 406.

KERREY AMENDMENTS NOS. 2428–2429

(Ordered to lie on the table.)

Mr. KERREY submitted two amendments intended to be proposed by him to the bill, S. 1415, supra; as follows:

AMENDMENT NO. 2428

At the end of subtitle C of title XI add the following:

SEC. ___. LIMITATION ON FUNDING OF PROGRAMS AND ACTIVITIES.

Notwithstanding any other provision of law, only amounts deposited into the National Tobacco Trust Fund may used to fund the programs and activities authorized under this Act.

AMENDMENT NO. 2429

Section 1991D of the Public Health Service Act, as added by section 221, is amended by inserting after subsection (g) the following:

''(i) COMMUNITY-BASED ACTIVITIES OF TOBACCO SCHOLARS.—

''(1) IN GENERAL.—Of the sums made available to the National Institutes of Health under this section, the Director shall make available a portion of such sums to support the community-based activities of the tobacco scholars assigned to States in accordance with paragraph (2).

''(2) TOBACCO SCHOLARS.—The Director of the National Institutes of Health shall—

''(A) designate individuals to serve as tobacco scholars from among individuals who receive funding through the National Institutes of Health for tobacco-related research; and

''(B) assign a tobacco scholar to each State.

''(3) COMMUNITY-BASED ACTIVITIES.—For purposes of paragraph (1), the term 'community-based activities' includes—

''(A) public forums for sharing research by tobacco scholars and other tobacco-related research with the medical community within States; and

''(B) dissemination of information to the public on tobacco-related research and the health-related implications of the conclusions of such research through means such as public forums, public service announcements, advertisements, and television broadcasts.

KERREY (AND KENNEDY) AMENDMENT NO. 2430

Mr. KERREY (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by them to the bill, S. 1415, supra; as follows:

At the end of title XI, add the following:

SEC. ___. PROGRAM OF PAYMENTS TO CHILDREN'S HOSPITALS THAT OPERATE GRADUATE MEDICAL EDUCATION PROGRAMS.

(a) PAYMENTS.—

(1) IN GENERAL.—The Secretary shall make payments under this section to each children's hospital for each hospital cost reporting period beginning after fiscal year 1998 and before fiscal year 2003 for the direct and indirect expenses associated with operating approved medical residency training programs.

(2) CAPPED AMOUNT.—The payments to children's hospitals established in this subsection for cost reporting periods ending in a fiscal year are limited to the extent of funds appropriated under subsection (d) for that fiscal year.

(3) PRO RATA REDUCTIONS.—If the Secretary determines that the amount of funds appropriated under subsection (d) for cost reporting periods ending in a fiscal year is insufficient to provide the total amount of payments otherwise due for such periods, the Secretary shall reduce the amount payable under this section for such period on a pro rata basis to reflect such shortfall.

(b) AMOUNT OF PAYMENT.—

(1) IN GENERAL.—The amount payable under this section to a children's hospital for direct and indirect expenses relating to approved medical residency training programs for a cost reporting period is equal to the sum of—

(A) the product of—

(i) the per resident rate for direct medical education, as determined under paragraph (2), for the cost reporting period; and

(ii) the weighted average number of full-time equivalent residents in the hospital's approved medical residency training programs (as determined under section 1886(h)(4) of the Social Security Act) for the cost reporting period; and

(B) the product of—

(i) the per resident rate for indirect medical education, as determined under paragraph (3), for the cost reporting period; and

(ii) the number of full-time equivalent residents in the hospital's approved medical residency training programs for the cost reporting period.

(2) PER RESIDENT RATE FOR DIRECT MEDICAL EDUCATION.—

(A) IN GENERAL.—The per resident rate for direct medical education for a hospital for a cost reporting period ending in or after fiscal year 1999 is the updated rate determined under subparagraph (B), as adjusted for the hospital under subparagraph (C).

(B) COMPUTATION OF UPDATED RATE.—The Secretary shall—

(i) compute a base national DME average per resident rate equal to the average of the per resident rates computed under section 1886(h)(2) of the Social Security Act for cost reporting periods ending during fiscal year 1998; and

(ii) update such rate by the applicable percentage increase determined under section 1886(b)(3)(B)(i) of such Act for the fiscal year involved.

(C) ADJUSTMENT FOR VARIATIONS IN LABOR-RELATED COSTS.—The Secretary shall adjust for each hospital the portion of such updated rate that is related to labor and labor-related costs to account for variations in wage costs in the geographic area in which the hospital is located using the factor determined under section 1886(d)(3)(E) of the Social Security Act.

(3) PER RESIDENT RATE FOR INDIRECT MEDICAL EDUCATION.—

(A) IN GENERAL.—The per resident rate for indirect medical education for a hospital for a cost reporting period ending in or after fiscal year 1999 is the updated amount determined under subparagraph (B).

(B) COMPUTATION OF UPDATED AMOUNT.—The Secretary shall—

(i) determine, for each hospital with a graduate medical education program which is paid under section 1886(d) of the Social Security Act, the amount paid to that hospital pursuant to section 1886(d)(5)(B) of such Act for the equivalent of a full twelve-month cost reporting period ending during the preceding fiscal year and divide such amount by the number of full-time equivalent residents participating in its approved residency programs and used to calculate the amount of payment under such section in that cost reporting period;

(ii) take the sum of the amounts determined under clause (i) for all the hospitals described in such clause and divide that sum by the number of hospitals so described; and

(iii) update the amount computed under clause (ii) for a hospital by the applicable percentage increase determined under section 1886(b)(3)(B)(i) of such Act for the fiscal year involved.

(c) MAKING OF PAYMENTS.—

(1) INTERIM PAYMENTS.—The Secretary shall estimate, before the beginning of each cost reporting period for a hospital for which a payment may be made under this section, the amount of the payment to be made under this section to the hospital for such period and shall pay such amount in 26 equal interim installments during such period.

(2) FINAL PAYMENT.—At the end of each such period, the hospital shall submit to the Secretary such information as the Secretary determines to be necessary to determine the final payment amount due under this section for the hospital for the period. Based on such determination, the Secretary shall recoup any overpayments made, or pay any balance due. The final amount so determined shall be considered a final intermediary determination for purposes of applying section 1878 of the Social Security Act and shall be subject to review under that section in the same manner as the amount of payment under section 1886(d) is subject to review under such section.

(d) LIMITATION ON EXPENDITURES.—

(1) IN GENERAL.—Subject to paragraph (2), there are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for payments under this section for cost reporting periods beginning in—

(A) fiscal year 1999 $100,000,000;

(B) fiscal year 2000, $285,000,000;

(C) fiscal year 2001, $285,000,000; and

(D) fiscal year 2002, $285,000,000.

(2) CARRYOVER OF EXCESS.—If the amount of payments under this section for cost reporting periods ending in fiscal year 1999, 2000, or 2001 is less than the amount provided under this subsection for such payments for such periods, then the amount available under this subsection for cost reporting periods ending in the following fiscal year shall be increased by the amount of such difference.

(e) RELATION TO MEDICARE AND MEDICAID PAYMENTS.—Notwithstanding any other provision of law, payments under this section to a hospital for a cost reporting period—

(1) are in lieu of any amounts otherwise payable to the hospital under section 1886(h) or 1886(d)(5)(B) of the Social Security Act to the hospital for such cost reporting period, but

(2) shall not affect the amounts otherwise payable to such hospitals under a State medicaid plan under title XIX of such Act.

(f) DEFINITIONS.—In this section:

(1) APPROVED MEDICAL RESIDENCY TRAINING PROGRAM.—The term ''approved medical residency training program'' has the meaning given such term in section 1886(h)(5)(A) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(A)).

(2) CHILDREN'S HOSPITAL.—The term ''children's hospital'' means a hospital described in section 1886(d)(1)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(iii)).

(3) DIRECT GRADUATE MEDICAL EDUCATION COSTS.—The term ''direct graduate medical education costs'' has the meaning given such term in section 1886(h)(5)(C) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(C)).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Communications Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, May 19, 1998, at 9:30 a.m. on Oversight of the Wireless Bureau of the Federal Communications Commission.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Tuesday, May 19, for purposes of conducting a full committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this oversight hearing is to consider the fiscal and economic implications of Puerto Rico status.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, May 19, 1998 at 2:30 p.m. to hold a Business Meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. MCCAIN. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Tuesday, May 19, 1998, at 10:00 a.m. for a hearing on ''Government Computer Security.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on ''Health Care Quality: Grievance Procedures'' during the session of the Senate on Tuesday, May 19, 1998, at 10:00 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ANTITRUST, BUSINESS RIGHTS AND COMPETITION

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Subcommittee on Antitrust, Business Rights, and Competition, of the Senate Judiciary Committee, be authorized to meet during the session of the Senate on Tuesday, May 19, 1998 at 10:00 a.m. to hold a hearing in room 226, Senate Dirksen Building, on ''Consolidation in the Telephone Industry: Good or Bad for Consumers?''

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Subcommittee on Administrative Oversight and the Courts, of the Senate Judiciary Committee, be authorized to meet during the session of the Senate on Tuesday, May 19, 1998 at 2:30 p.m. to hold a hearing in room 226, Senate Dirksen Building, on: ''S. 1914, The Business Bankruptcy Reform Act: Business Bankruptcy Issues in Review.''

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

NATO WRAP UP

● Mr. BINGAMAN. Mr. President, I joined the majority of my Senate colleagues in voting overwhelmingly in favor of the resolution approving the accession to NATO of Poland, Hungary, and the Czech Republic. I believe that these three countries have made remarkable progress in establishing

democratic institutions and undertaking fundamental economic reforms. In addition, for the United States to refuse their admission into NATO at this stage would undermine U.S. leadership both in the Atlantic Alliance and globally.

However, my support for the admission of Poland, Hungary, and the Czech Republic into NATO should not be interpreted as a green light for further rounds of NATO enlargement. I believe that there is no mandate for further rounds of NATO enlargement. As the forty-one votes in support of the Warner Amendment indicate, more than enough Senators are concerned about moving too fast on NATO enlargement to block approval of the accession of any additional states to NATO in the near-term. In addition, provisions of the NATO resolution makes clear that the Senate expects to be closely consulted prior to any future negotiations on inviting other countries to join NATO.

We must get answers to critical questions before we even begin to consider whether additional countries should be invited to join NATO. Before any further enlargement is contemplated, the United States needs to know the costs of the first several years of integrating Poland, Hungary, and the Czech Republic into NATO, and the burden sharing arrangements for meeting those costs. In addition, the Alliance must first complete revising and updating its Strategic Concept, the statement of NATO's fundamental military mission. This will allow NATO members, and countries potentially seeking membership, to judge for themselves whether further expansion strengthens—or undermines—the Alliance's ability to carry out its strategic mission.

I continue to have serious doubts about the wisdom of any further enlargement of NATO. In rushing to bring the states of the former Warsaw Pact and the former Soviet Union into the NATO military fold, we risk undermining our ability to work with Russia to reduce the most immediate threats to our security. In particular, I am concerned about the adverse impact that the consideration of the Baltic states for NATO membership might have on on-going U.S.-Russian cooperative initiatives. These initiatives address some of our highest security concerns, including the containment of the proliferation of nuclear, chemical, and biological technology and materials, and achieving mutual reductions in strategic nuclear forces. With regard to the Baltics, I draw the attention of my colleagues to a colloquy between Sen. BIDEN and myself recorded in the CONGRESSIONAL RECORD of April 30th, on page S3888. This colloquy clarifies that the United States has not pre-committed, either in the U.S.-Baltic Charter of Partnership or elsewhere, to support NATO membership for the Baltic states.

I hope now we can put the distraction of NATO enlargement behind us. It has yet to be explained how the expansion of a military alliance, formed during the height of the Cold War to defend its members' territory from external attack, serves our needs in today's changed security environment. The threats we face today require careful consideration of a full range of options—whether NATO, the Partnership for Peace initiative between NATO and 28 countries of Europe and the former Soviet Union, or other collective security arrangements—to increase the security and stability of all democratic states.

The Senate, as well, needs to turn its attention to efforts that mutually enhance the security of the United States, its NATO allies, and the states of Eastern Europe, including Russia. These include laying the groundwork for Senate approval of the Comprehensive Test Ban Treaty, supporting the elimination of Russian strategic arms under the Cooperative Threat Reduction program, and encouraging acceleration of the START process to further reduce Russian nuclear weapons. In the long-run these initiatives offer valuable alternatives to NATO enlargement for addressing the highest security concerns in today's post-Cold War security environment.●

TRIBUTE TO THE WILLIAM E. BIVIN FORENSICS SOCIETY: 1998 NATIONAL COLLEGIATE DEBATE CHAMPIONS

● Mr. MCCONNELL. Mr. President, I rise today to ask my colleagues to join me in congratulating the William E. Bivin Forensic Society—the debate team at Western Kentucky University, located in Bowling Green, Kentucky—for their recent victories at the national collegiate debate championships.

In mid-March, Western won the Delta Sigma Rho—Tau Kappa Alpha Lincoln-Douglas Debate Championships at Miami University in Ohio. Two members of the team, Mike McDonner and Aaron Whaley—were co-national champions in the individual competition.

Then, in April, Western also won at the National Forensics Association tournament at Western Illinois University, defeating Ohio State University by a 5–0 decision. Mike McDonner again captured the individual title, and teammate Kerri Richardson was a semifinalist. In addition, Kristin Pamperin and Doug Morey were quarterfinalists. Other varsity members of the victorious Western Kentucky team were Amanda Gibson and Aaron Whaley. Novice debaters Mitchell Bailey, Jennifer Cloyd and Brian Sisk also contributed to the team title.

These two debates comprise the national championships in college debating circles, and it is extremely rare that one team wins both events. Amazingly, this is second time in three years that Western Kentucky has claimed both debates. The winning tradition being built in Bowling Green is a testament to the strong leadership of the team's coach, Judy Woodring.

Mr. President, Western Kentucky University's debate team is building quite a tradition. I offer my congratulations to Coach Woodring and to all the members of the Bivin Forensics Society for another great year. With two national championships in three years, I expect that we may be seeing the beginning of a dynasty in Bowling Green.●

MIGNON CLYBURN'S APPOINTMENT TO THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

● Mr. HOLLINGS. Mr. President, I rise today to congratulate Mignon Clyburn, daughter of U.S. Representative JAMES CLYBURN, on her election to the South Carolina Public Service Commission. The PSC—which overseas electricity, gas, phone, water, and sewer rates—is crucial to safeguarding consumer rights for all the people of South Carolina. Its work will be especially important and complex now that the telecommunications and utilities industries have been deregulated. It is because the work of the Public Service Commission is so important that I am glad to see someone as capable and dedicated as Mignon Clyburn appointed to the Commission.

Public service flows in Mignon's blood. Her father, the first black Representative elected from South Carolina since Reconstruction, served South Carolina for many years in various community and state positions before entering the House of Representatives.

Mignon has worked for over a decade as the driving force behind The Coastal Times newspaper. Her tireless work writing, editing, and marketing the magazine has earned it well-deserved praise as one of the best community papers in the Southeast. Mignon also has served her community through extensive volunteer work with the United Way and other organizations.

Mr. President, Mignon Clyburn will make an excellent Commissioner. She understands the importance of the Public Service Commission for the people of South Carolina. She said after accepting the position, ''I think this is the most significant agency . . . in the state. What's more vital or fundamental than your utilities?''

Mignon Clyburn will make a wonderful Public Service Commissioner. She is an intelligent, hard working, and committed to improving the life of every South Carolinian. I am confident she will be a dedicated and effective guardian of South Carolina consumers.●

NATIONAL ASSOCIATION OF LETTER CARRIERS FOOD DRIVE

● Mr. SANTORUM. Mr. President, I rise today to discuss the importance of the National Association of Letter Carriers Food Drive. The National Association of Letter Carriers Food Drive,

held in conjunction with the U.S. Postal Service and local United Way, is the largest one-day collection of food in the nation. Last year almost 5,000 pounds were collected in Horsham, Pennsylvania while some 73 million pounds were collected nationwide.

On Saturday, May 9, letter carriers in Horsham and across the nation reached out to help their neighbors who fell on hard times by collecting nonperishable food donations along their mail routes. Each year, their efforts help to restock the shelves of local food pantries. Likewise, the donations raided through this annual event prepare charities for the overwhelming demand for food during the Thanksgiving and Christmas holiday seasons.

Mr. President, I commend the letter carriers, the men and women of the U.S. Postal Service, and the United Way for making this collection possible. On behalf of the United States Senate, I would like to recognize the dedication of these public servants and the generosity of the families who donated to this worthy cause. I ask my colleagues to join me in extending the Senate's best wishes for continued success to all those who participated in the National Association of Letter Carriers Food Drive.●

TRIBUTE TO GEORGE NORCROSS

● Mr. LAUTENBERG. Mr. President, I rise today to remember a dear friend and treasured community leader in Southern New Jersey, George Norcross II.

George and I shared many experiences and values and each of us ended up in public service.

We both grew up in a poor, urban environment, he in Camden, and I in Paterson. We both lost our fathers at a very young age, but continued to attend high school while beginning to work. We both served in the military during World War II, he in the Navy and I in the Army.

After George returned from the war, he built a career in union organizing efforts and community service. His was a voice of strength and determination for working families in Camden County—and what a loud voice it was! He fought tooth and nail for union workers, never without a cigar in hand. But his rough exterior was complemented by his caring heart, and the effectiveness of his work with organized labor was reinforced through his numerous philanthropic activities.

The Union Organization of Social Services, of which George became president in 1955, reflected his marriage of organized labor and charity work. The mission of UOSS is to deal with drug and alcohol abuse, job training, food banks, disaster relief, clothing drives and blood banks within its community.

George was also active in the United Way his entire life, serving as its general chairman in 1992 and as chairman emeritus after his retirement. His involvement with this organization led to the United Way's Labor Support Committee, which raised millions of dollars for charity.

As a touch negotiator, a coalition builder, and someone who always got the job done, George's unrivaled union leadership will never be forgotten. He served as president of the AFL-CIO Central Labor Union for 16 years, was a member of the International Brotherhood of Electrical Workers Local 1448, and became the international representative of the International Union of Electrical Workers.

George and I shared the conviction that educational opportunity is critical to a robust and stable democracy. George's dedication to providing educational opportunities to others led to his creation of the Peter J. McGuire Scholarship Program in conjunction with the American Federation of Teachers. These scholarships, presented every year at New Jersey's Labor Day celebration, benefit children of Southern New Jersey union members. And if my schedule didn't permit me to attend this annual event one year, I would get an earful from George!

George's union leadership and sense of civic responsibility have benefitted countless New Jerseyans, including students able to go school on scholarship, people in need who receive help, and workers with grievances whose rights are defended.

George Norcross will be dearly missed. I want to extend my heartfelt condolences to Carol, George's wife of 43 years, and his four sons, George III, John, Don and Phil. I know I will continue to cross paths and work with them on behalf of New Jersey.●

TRIBUTE TO GARY HIRSHBERG

● Mr. SMITH of New Hampshire. Mr. President, I rise today to recognize Gary Hirshberg, president and chief executive officer of Stonyfield Farm in Londonderry, New Hampshire, who is being honored with the two most prestigious business leadership awards in New Hampshire. Dedicated to social and environmental corporate responsibility, Gary Hirshberg became the first New Hampshire entrepreneur to be named both ''Business Leader of the Year'' by Business NH magazine and ''New Hampshire's 1998 Small Business Person of the Year'' by the United States Small Business Administration.

A New Hampshire native and third-generation manufacturer, Gary's vision and commitment to social and environmental issues played an integral role in the development of Stonyfield Farm. Gary Hirshberg was named CEO shortly after joining Stonyfield. Together, with founder Samuel Kaymen, they embarked on an educational project designed to revitalize family farms in the New England dairy industry while positively impacting the environment and the local economy.

The same dedication and determination that prompted two individuals to do everything from milk cows to deliver products out of an old farmhouse in Wilton, helped the Stonyfield Farm family to grow to its current 150 employees and 21,000-square-foot, custom-designed ''Yogurt Works'' in Londonderry. Having been raised on a farm myself, I can appreciate the hard work done by Gary and his partner over the years. As Gary watched the company's distribution expand to all 50 States and Great Britain and annual sales exceed $40 million, he never lost sight of his commitment to family-owned farms. Under Gary Hirshberg's leadership, Stonyfield Farm continues to promote awareness of the plight of the small farm through such programs as ''Adopt a Cow,'' and to raise environmental consciousness through the company's use of operationally efficient natural resources and its sponsorship of recycling programs.

As a former small business owner, I appreciate the challenges faced by small business owners and understand that these businesses are the backbone of our economy. Consequently, I have worked throughout my tenure in Congress to lift the tax and regulatory burden from the shoulders of small business so that the dreams and aspirations of people like Gary Hirshberg and Stonyfield Farm may continue to grow and prosper. Gary's compassion and commitment to local communities, environmental awareness, and social responsibility embodies the true New Hampshire spirit. I commend him for serving as a role model for not only the youth of the Granite State but for all of us. It is with great pride that I represent Gary Hirshberg in the United States Senate.●

TRIBUTE TO MARJORY STONEMAN DOUGLAS

● Mr. GRAHAM. Mr. President, I rise today with a heavy heart and bearing the sorrow that Floridians and Americans everywhere feel at the death of a national treasure—Marjory Stoneman Douglas.

Marjory Stoneman Douglas is and will always be the ''Mother of the Everglades.'' That title was made official in 1993, when President Clinton presented here with the Presidential Medal of Freedom—our nation's most prestigious civilian honor.

Over 130 years ago, upon meeting Harriet Beecher Stowe for the first time, President Abraham Lincoln greeted the author of Uncle Tom's Cabin with this salutation: ''So this is the little woman who started the great war.''

Marjory Stoneman Douglas was equally influential in her own time. She was the feisty woman who started the great effort to save the Everglades from mankind's abuse and neglect.

She was born on April 7, 1880 in Minneapolis, Minnesota. Perhaps it was this connection to ''The Land of Ten Thousand Lakes'' that was responsible for her intense passion for environmental preservation. She graduated

from Wellesley College just over two decades later with the prophetic title of ''Class Orator.''

These two characteristics—a love of nature and a powerful determination to make her voice heard—would soon come together to the benefit of the Florida Everglades. In 1915, Marjory arrived in Miami and joined the staff of the *Miami Herald*. With the exception of a brief stint as a Red Cross worker during World War I, she spent the next eighty-three years working to save the Everglades from destruction.

When Marjory Stoneman Douglas arrived in South Florida, many people thought of the Everglades as nothing more than another Florida swamp. Indeed, Governor Napoleon Bonaparte Broward, who served from 1905 to 1909, had proposed draining the Everglades to reclaim the land there.

Marjory did not brook ignorance about the Everglades. Instead, she poured time, energy, blood, sweat, and tears into re-educating the people of Florida about the crowning jewel in Florida's collection of environmental treasures. Long before scientists became alarmed about the effects on the natural ecosystems of south Florida, she was taking public officials to task for destroying wetlands, eliminating the sheet flow of water across the Everglades, and upsetting the natural cycles upon which the entire South Florida ecosystem depends.

Marjory's oratory and hustle produced tangible accomplishments. Her crusade to win federal protection for the wetlands scored a major victory when President Harry Truman dedicated Everglades National Park in 1947.

That same year, she published the work that would jump-start the modern era of Everglades restoration: The Everglades: River of Grass. To this day, that tome stands as the definitive descriptive of the national treasure she fought so hard to protect.

Visitors travel thousands of miles to see the Everglades. Scientists and naturalists spend entire lifetimes studying the Everglades' diverse habitats and unique collection of plants and animal life. Today, public officials from every ideological persuasion and geographic location line up to support efforts to protect the Everglades. None of this would have been possible without Marjory Stoneman Douglas' Herculean efforts.

She supplemented her hard work and determination with a disarming candor. Some people will remember that Marjory co-authored a 1920's anti-gangster play entitled Storm Warnings. That title was well-suited to the personality of its author. She would frequently blow in like a Florida summer thunderstorm and give you her thoughts in no uncertain terms, leaving you dazed and drained but unmistakably sure of her intentions.

When I was a state legislator in the late 1960's, Marjory came to Tallahassee to speak to the Dade County delegation. She conveyed one simple, blunt message: we would safeguard the health of the Everglades and if we didn't, we would all spend an uncomfortable afterlife in hell.

I took those words to heart. When I was Governor from 1979 to 1987, Marjory and I teamed up to launch a campaign to safeguard the Florida Everglades. It is an effort that has attracted broad, bipartisan support over the years—a testament to Marjory's persuasive powers.

In 1997, I joined Senator CONNIE MACK and U.S. Representative PETER DEUTSCH in introducing legislation to name over 1.3 million acres of the Everglades after its modern saviour. President Clinton signed that legislation in mid-November, and I helped to dedicate the ''Marjory Stoneman Douglas Wilderness'' on December 4, 1997—Everglades National Park's 50th Birthday. Marjory's ashes will be scattered over that wilderness area.

Marjory Stoneman Douglas was a friend and mentor to me for many years. I will miss her greatly. I want to conclude today by reading from John Rothchild's introduction to her autobiography. Recalling her appearance at a 1973 public meeting in Everglades City, Mr. Rothchild offered this apt description:

> Mrs. Douglas was half the size of her fellow speakers and she wore huge dark glasses, which along with the huge floppy hat made her look like Scarlet O'Hara as played by Igor Stravinsky. When she spoke, everybody stopped slapping [mosquitoes] and more or less came to order. She reminded us all of our responsibility to nature. Her voice had the sobering effect of a one-room schoolmarm's. The tone itself seemed to tame the rowdiest of the local stone crabbers, developers, and the lawyers on both sides. I wonder if it didn't also intimidate the mosquitoes.

Marjory Stoneman Douglas always got your attention—she was the most eloquent spokesperson that the Everglades will ever have. The embattled wetland lost is ''Mother'' last week, but we must keep her memory and legacy alive by continuing our efforts to preserve the Everglades for future generations of Floridians and Americans.●

TRIBUTE TO DR. ALVIN C. POWELEIT: A FIXTURE IN NORTHERN KENTUCKY FOR OVER 50 YEARS

● Mr. MCCONNELL. Mr. President, I rise today to remember the life of Dr. Alvin C. Poweleit. For nearly 50 years, the people of Covington were blessed to have Dr. Poweleit as a member of their community, and few families were not touched by the kind gentleman known as ''Pepa.''

Pepa Poweleit grew up in Northern Kentucky in the town of Newport. After earning his medical degree, Dr. Poweleit returned to Newport in the late 1930s as general practitioner. Like most young men of his generation, he left his hometown behind when he signed up to serve in World War II. He soon found himself in the Philippines, where he was the first U.S. medical officer to be decorated in the war, when he saved personnel in a submerged Brenn Gun Carrier.

Dr. Poweleit spent over three years in Japanese POW camps in the Philippines, and was a survivor of the Bataan Death March. After the war, Dr. Poweleit returned to Northern Kentucky, where he opened up his own practice in Covington as an eye, ear, nose and throat specialist.

For the last 50 years, the Poweleit family has maintained the office at the corner of Eighth and Scott in Covington. It was a rare day that Dr. Poweleit didn't work 14 hours. If there were sick patients to be seen, Pepa Poweleit would see every single one. At a time when most people lived within walking distance of their family doctor, it wasn't rare to see Dr. Poweleit still in the office after midnight.

Pepa Poweleit retired from practice in 1981, leaving the family practice to his son Alvin D, an eye specialist known in the community as Dr. Alvin. Carrying on the tradition of family practice, Dr. Alvin remains a fixture today in the Covington community.

Mr. President, last June, Pepa Poweleit was tragically killed when the car in which he was a passenger was run into by a truck. He was 89. Pepa Poweleit was a beloved figure in the communities of Northern Kentucky. Though nearly two decades have gone by since he retired, and almost a year has passed since his death, Pepa Poweleit is still sorely missed.●

NATIONAL EMS WEEK

● Mr. SANTORUM. Mr. President, I rise today to congratulate Lisa Mauger, Mary McGuire, Stephanie Schmoyer and Christine Webster on being honored with the Stars of Life award by the American Ambulance Association (AAA).

For the past four years, AAA has honored paramedics and emergency medical service (EMS) personnel who exemplify what is best about their field. Past Stars of Life award recipients have included paramedics who were part of the rescue efforts during disasters like the Centennial Olympic Park and Oklahoma City bombings and the severe flooding in the South and Midwest.

Through a spirit of selflessness, Lisa, Mary, Stephanie and Christine have dedicated themselves to serving others. Their spirit of community is a great source of pride, not only for Pennsylvania, but for the United States.

Mr. President, I hope my colleagues will join with me in honoring these women for their faithful service and extending best wishes for continued success in the years to come.●

ORDERS FOR WEDNESDAY, MAY 19, 1998

Mr. MCCAIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it

stand in adjournment until 9:30 a.m. on Wednesday, May 20.

I further ask that, on Wednesday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate resume consideration of the pending amendments to the tobacco legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. MCCAIN. Mr. President, a motion to table the Kennedy amendment and the Ashcroft amendment is expected to occur by midmorning. In addition, several other amendments are expected to be offered. Therefore, votes can be expected throughout the day and into the evening on Wednesday.

ORDER FOR ADJOURNMENT

Mr. MCCAIN. If there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of Senator KENNEDY.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Massachusetts is recognized.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. KENNEDY. Mr. President, I join all of my colleagues in thanking our friend and colleague and chairman of our task force, Senator CONRAD, for the enormously informative presentation that was made in support of our proposal before the Senate now, which is to raise the cost of a pack of cigarettes by $1.50.

I thank my colleague and friend, Senator KERRY, for his comments and for all the work he has done, as well, in bringing us to where we are in this legislative session, so that we are having an opportunity to debate these issues on the floor of the Senate and having an opportunity to express a judgment about these matters this afternoon, again tomorrow, and the remainder of this week.

This is enormously important. Perhaps, in many respects, it is the most important measure that we will have before the Senate in this term—certainly one of the most important public health issues that we will have before the Senate. I think it is important that the American people give focus and attention to this issue and, in particular, to the amendments we are now discussing and debating on the increase of the per pack cost of cigarettes.

I also mention our colleague and friend, the chairman of the committee, Senator MCCAIN. I, too, want to join in expressing appreciation for the fact that we had the opportunity to get to this legislation through his leadership. Now we have an opportunity to strengthen and improve it. We are grateful for his leadership.

Mr. President, I want to just take a few moments to respond to the issue that Senator MCCAIN spoke to when we were making the presentation about the importance of increasing the price per pack by $1.50. Senator MCCAIN at that time talked about, what is magical about $1.50? What is really the difference between that and $2 or $2.50 or $3?

Mr. President, I think it is important to understand why we do have the $1.50. It is, as I mentioned earlier, and as Senator LAUTENBERG and Senator CONRAD have pointed out, the recommended figure by not just the majority, but the entirety of the public health community, to be essential if we are going to have some impact in reducing cigarette smoking by teenagers in this country and also to achieve the goal that was established by the attorneys general in their own proposal. They established a 10-year goal of 60 percent. That was in the initial proposal made by the attorneys general—the 60 percent.

In our Committee on Labor and Human Resources, which had the consideration of this legislation for a short period of time—we had the jurisdiction because of the responsibility that the committee has regarding the Food and Drug Administration, and we had a markup on the legislation—we had a majority of the members who said, ''We don't want to see a reduction of 60 percent, we want a reduction of 80 percent.'' If we are going to accept that, then we have to find out how we are going to get and reach that particular goal. That is really the fundamental issue. It doesn't do much good to say we are going to set a goal of 30, 40, 50, or 60 percent and then not take the steps to be able to achieve it.

The attorneys general went with 60 percent. The goal established out of the Commerce Committee was 60 percent. So it is fair enough to ask ourselves, will we reach that goal of 60 percent with the proposal of the Commerce Committee? And what we are saying is that we will not. You won't reach that with $1.10. You will get maybe into a 34, 36 percent reduction, but you are not going to get the 60 percent reduction, which has been the goal—and I think a worthwhile goal—to see that 60 percent of the young people in this country are going to stop smoking over a period of 10 years. We will be able to reach that with $1.50. I will come back and explain that in greater detail in a few moments. We will be able to reach that and give the authority for that.

The chairman of the Commerce Committee says we will get there, and if we don't get there on the front end, we will get there on the back end by the requirements we have on the look-back provisions. But I think it is fair to say that with the look-back provisions, and the capping of the payments on the look-back provisions of some $4 billion, that the best estimate, even if you are going to have the violations of the look-back provisions, you are only talking about perhaps 15 or 20 cents more per pack.

So you get up to maybe $1.30 or $1.35. But you still are not getting to where the health economists and professionals say you have to get in order to have the significant reduction.

That is really the issue that is before the Senate. That is the question that we are going to decide on tomorrow.

What is the justification for not taking the recommendations of the public health community? What is possibly the reason for not doing so? There are those who can say, ''Well, if you do so you are going to pay for the industry itself.'' Senator CONRAD just responded to that.

I come back to the excellent testimony we had before the Judiciary Committee and before the task force that responds to that which estimates that even with $1.50 as Jeffrey Harris, who is probably the most thoughtful and competent unbiased health economist who has studied this for the longest period of time, has estimated that even with an increase of $1.50, that by the year 2003 the profits for the industry will be in excess of $5 billion just on the domestic sales of product here in the United States, a very, very generous profit for this industry—a generous profit for the industry even at $1.50.

What is possibly the reason not to support the recommendation of the public health community which says we ought to go to $1.50 a pack if we are serious about stopping young people from smoking?

That is overwhelming testimony. That is overwhelming presentation. It is overwhelming evidence. It has not been rebutted. It won't be rebutted. It hasn't been rebutted tonight. It won't be rebutted tomorrow. And it has not been rebutted by any of the publications, including the tobacco industry itself. It has not been rebutted.

We will come back to what the tobacco industry has been doing. So this is the issue. Why wouldn't we want to do it? What is going to be the argument against it? I don't find the arguments very persuasive. I do not hear them. It is just, ''Well, we have a better way of doing it.'' But we are taking a very significant chance. Why do that when we have such overwhelming and powerful evidence this amendment can make a significant difference, and based upon the human tragedy that is taking place among our teenagers every single day across this country? It isn't a problem that is becoming less important. It is becoming more important. It isn't an issue that is resolving itself. It is becoming more acute. That is the question that we can ask.

We in this body tomorrow can take a major step in improving the quality of life for young people in this country for years ahead. The overwhelming majority of the American people are for it.

The powerful special interests of the tobacco industry are against it. And we are going to find out here on the floor of the Senate when that rollcall is going to be there whether we are going to stand with the families and stand with the children of this country and stand with the future, or whether we are going to stand with an industry that has been so discredited in terms of its representations and presentations in this whole discussion and debate and over the period of this past year. That is the issue. I don't think we can have many that are more clearly defined than the one we have before us and will have before us tomorrow.

According to University of Illinois Professor Chaloupka, the Nation's leading authority on the impact of higher cigarette prices on teenage smoking, a $1.50 per pack increase in cigarette prices will reduce the teenage smoking by 56 percent over 10 years. A $1.10-a-pack increase, on the other hand, will reduce youth smoking rates by only 34 percent. In fact, the $1.15 increase will only return youth smoking to its 1991 level because of the recent surge in teenage smoking rates. That is clearly unacceptable.

FDA Commissioner David Kessler has called smoking a ''pediatric disease with its onset in adolescents.'' In fact, studies show that over 90 percent of the current adult smokers began to smoke before they reached the age of 18.

It makes sense for Congress to do what we can to discourage young Americans from starting to smoke during these critical years. A $1.50-a-pack increase over 3 years is the right medicine. A $1.10 increase won't do the job.

Youth smoking in America has reached epidemic proportions. According to a report issued last month by the Centers for Disease Control and Prevention, smoking rates among high school students soared by nearly a third between 1991 and 1997. Among African-Americans, the rates have soared by 80 percent. More than 36 percent of high school students smoke, a 1991 year high.

With youth smoking at crisis levels and still increasing we cannot rely on halfway measures. Congress must use the strongest legislative tools available to reduce youth smoking as rapidly as possible.

Mr. President, let's take a look at what has been happening to the teenagers in this country over the period of the recent years. Tobacco use, as mentioned, is a ''pediatric disease with its onset in adolescents.'' It is no coincidence that teenage smoking has continued to increase since the early 1990s. The industry has systematically reduced its prices on cigarettes and increased its spending on marketing and promotional strategies targeted at youth.

A significant date in this cynical manipulation is April 2, 1993, a day which will live in infamy in the tobacco industry. On that day, often called ''Marlboro Friday,'' the Nation's largest tobacco company, Philip Morris, fired the opening salvo in the new price strategy which reversed a decade-long decline in youth smoking in the United States. Philip Morris slashed 40 cents off the price of Marlboro, its most popular brand of cigarettes among children. The strategy was defined to protect its profits against generic and discount brands which were capturing an increased share of the market.

Let me show this chart which gives the overall changes about what is happening with teenage smoking here in the United States. In 1991, it increased 27 percent; in 1993, 30 percent; in 1995, 34.5 percent; in 1997, 36.4 percent; a yearly average of a 32-percent rise since 1991.

This is going up so rapidly that we have to ask ourselves what are we going to do to try to slow it down? What can we do to possibly stop it? And the goals that have been set by the attorneys general and by the Commerce Committee is 60 percent. Let's try to do that. The best way is with the $1.50.

Teenage smoking on the rise. Just look at who has been the targets of the tobacco companies.

Blacks and non-Hispanic increased 80.2 percent. They have been targeted by the industry. They have been successful. Hispanic, up 34 percent, and white and non-Hispanic, 28 percent. They have been the targets of the tobacco industry effort to expand their market to bring these young people into addiction to be the source of profits for future years.

The tobacco industry looks at a child, and, says, ''This is my profit for the future years. See what I can do to get that child addicted.''

You say, ''How can you say that, Senator? How can you make a statement like that on the floor of the U.S. Senate?''

Listen to what the Philip Morris memo says in 1987 at the Minnesota trial.

The '82–'83 round of price increases prevented 500,000 teenagers from starting to smoke. This means that 420,000 of the nonstarters would have been Philip Morris smokers. We were hit hard. We don't need that to happen again.

This isn't a statement made by the Senators from Massachusetts, North Dakota or New Jersey. Here it is in the words of the tobacco industry. Listen to what they say about an increase in price.

The '82–'83 price increase prevented 500,000 teenagers from starting to smoke. This means that 420,000 of the nonstarters would have been Philip Morris smokers.

That is their percent of the market.

We were hit hard. We don't need that to happen again.

Well, they will have a chance to have it happen to them again tomorrow at noontime when we do what the cigarette companies dread the most, give them an increase in price. That is what they dread the most. We will hear, oh, my goodness, all this fluttering around over this tax bill—can we afford it; it is regressive, and all the rest.

If you want to stop teenagers from smoking, there it is, according to the industry itself. And now, Mr. President, we see what has happened. Every parent in this country ought to be concerned about the explosion in the numbers of teenage smokers in this country with an extraordinary rise, the fastest rise we have seen really in the history of any kind of documentation about kids smoking.

Now, you can say let's look again at what was really the reason for this.

Well, Mr. President, I suppose it is all summarized best by this Philip Morris memo. We can see now what they were talking about when you look at what has happened to the real price—the impact on teen smoking from 1980 to 1995. Here is the steep increase in the price, and here is the decline in the teenage smoking.

That is what Philip Morris was talking about—the '1982–83 increase in the price and the decline in the teenage smoking, right there. There it is, Mr. President. And that represents the 420,000 Philip Morris potential smokers who didn't get started—in just that short line here.

But now let's look at what has happened with the price over the rest of the period of time. We had the gradual increase. And we will hear more about that. That is basically the monitoring and increasing of what? You say, Senator, well, it is just the price that is going up. How could they possibly—why would they do that?

Well, there is no question the price was on the rise all through here and look what was happening with teenage smoking, Mr. President. Look what was happening with teenage smoking. As the prices were going up here, the number of teenage smokers was coming down here.

We are challenged: Well, who are these public health officials? Where are these studies? What kind of findings is Dr. Koop referring to?

Just look at this record. Just look at this record as to what is happening out there in the countryside, the dramatic increases in the number of kids that are going ahead and smoking and look in the more recent times. And then look what happened where you have the increase in the price and the decline here. And then we see the drop, the real price right here corresponding to the dramatic increase and leveling off.

See the drop here, Mr. President. You see the drop in the real price and the explosion of teenage smoking. How many times do we have to make this case?

Well, you know something. People can say, ''Well, look, it is flattened off.'' This hasn't flattened off.

Well, what happened in the interim? What happened in the interim is the explosion of the tobacco industry in advertising, $5 billion a year in advertising. And that has made sure that these -

kids continued on with their smoking. They monitor this carefully, what the price and the necessary advertising is. They take the focus groups; they do their polling; they do their marketing surveys. And then they know exactly what to do, how to calculate this, and that is what they are doing.

This whole group, increasing 30 percent a year during all of this period of time, are the kids that are being addicted to smoking. As we found out in our Judiciary Committee, we are a Nation that is concerned about what we are going to do about the problems of substance abuse, and just about every professional will tell you that the gateway in terms of the use of heroin, cocaine, the other substance abuse starts with smoking—and starts with teenage smoking. And they can draw you a correlation about where those kids start getting off the straight and narrow path almost by the time they begin to smoke as kids. That record is out there. I will put some of that in the RECORD and reference it tomorrow morning, Mr. President, but that is a fact and they can demonstrate that to you. That makes the case about as well as it can be made.

I don't know how much more convincing you have to be. I do not hear the response from our colleagues and friends who are opposed to this. According to Jeffrey Harris, health economist at MIT, who is the most experienced, thoughtful and knowledgeable, and certainly the most experienced in terms of these issues, the profit even with $1.50 for the industry itself will be $5.1 billion—$5.1 billion—$5.7 billion under the McCain bill; with no legislation, $6.3 billion. Very, very profitable industry. And another $2 billion to $3 billion per year from international cigarette sales and from nontobacco products—Miller, Kraft, Nabisco.

We are talking about economic dynamite when we are talking about these companies. And they shed these crocodile tears if we propose putting on a $1.50 per pack.

The thing we do know, Mr. President, is that we will have a significant impact in reducing teenage smoking. Why take a chance? Why take a chance of not doing this job right? Why take a chance of not taking the steps that are necessary to move ahead to make a difference for all of these kids? I do not understand it.

We have heard about some of the reasons why we should not do it. I think the Senator from North Dakota stated it well. If we do it, the arguments have been made, they won't be profitable. That has been responded to. If we do it, we are going to get into questions of smuggling. We will have to deal with this issue. And as Senator CONRAD had pointed out, the smuggling is not taking place in the countries with the highest costs, which you would normally think. Countries where smuggling is the greatest is where the prices are, in some instances, a quarter or a third of the higher price, but fail to have effective law enforcement provisions. So you can say, ''Well, what are you going to have in terms of law enforcement provisions?''

Mr. President, others will speak to this. But just to mention briefly: Closed distribution systems; require licensing of everyone in the cigarette distribution chain, manufacturer or wholesaler, distributor and retailer; all cigarettes manufactured for export must be clearly marked so they can be easily identified; additional law enforcement resources for Customs and ATF.

We hear excellent responses from those who have responsibilities for smuggling, and they have answered to that. So we know we are going to have minimal impact on the profits of the industry. We know it can work effectively on smuggling. And we know what group in our society is going to benefit the most.

Let me just continue about the teenagers and some of the things that happen to these teenagers. Philip Morris reduced prices by 50 cents in my own State of Massachusetts and New York, both of which had recently increased their cigarette tax. This is some 3 years ago. A month later, R.J. Reynolds, the Nation's second largest cigarette company, which manufactures Camel cigarette, responded by matching Philip Morris price cuts on its most popular brands with teenagers, and the price cuts came at the same time the Federal tax was being increased from 20 to 24 cents a pack and a larger tobacco increase was being considered to fund the Clinton administration's proposal for health care reform. In addition to the price cuts, the tobacco industry continued to spend on advertising, promotional giveaways, T-shirts, coupons, sports gear, buy-some-get-some-free offers to increase sales.

And, as I mentioned, much of this advertising was targeted to children and adolescents, promising popularity, excitement, success, for those who begin to smoke. It is no coincidence, then, that the price cuts and increased advertising aimed at kids led to the rise in teenage smoking.

I just show that, time in and time out, if you lower the price and you increase the advertising, you increase the teenage smoking. That is as clear as it is that we are standing tonight. You just cannot argue with those facts; they are indisputable. And, still, we are having to make this case for the increase, for $1.50. The $1.50 per pack will address these problems. We will see this dramatic reduction in teenage smoking. It has been stated by those who have studied and reviewed this. The amendment we are proposing provides for the cigarette price index of $1.50 a pack for the next 3 years. The $1.10 increase over 5 years in the managers' amendment is not adequate to achieve the youth smoking reduction goals.

If you had the $1.10 in 1 year, even $1.10 in 2 years, you would have some impact. But $1.10 over 5 years is not going to have the kind of impact, even with the look-back provisions, that those who support that proposal are supporting, particularly if you are talking about reductions of 60 percent. You cannot have it both ways. If you are going to reach 60 percent, you have to have the increase in the price, and it has to be fast. And you have to have the corresponding counteradvertising measures and other supports, and a look-back provision that is going to be worthy of the name. But just to say we are establishing a goal and then not to have the real teeth in that proposal I think diminishes what we are stating is our goal and what should be our goal, and that is to pass legislation that is going to do something about kids smoking in our country and around the world.

By raising the price by $1.50 instead of $1.10, we will prevent an additional 750,000 children from smoking over the next 5 years. That will mean 250,000 fewer premature deaths from tobacco-induced diseases. What other step could we take here in the U.S. Senate, what could we possibly do in this session, so we could say we will save the lives of 250,000 children in the action of a single day? You don't find it. We won't have it. It is not there. But it will be tomorrow. We will have that kind of impact. And that is the issue.

Public health experts have overwhelmingly concluded that the increase of $1.50 is the minimum price increase necessary to achieve our youth smoking reduction. Dr. Koop, Dr. Kessler, the Academy of Sciences, the American Cancer Society, the American Heart Association, American Lung Association, American Medical Association, the ENACT Coalition, Save Lives Not Tobacco Coalition, have all stressed the importance of a price increase of at least $1.50 per pack—some for $2, most for $1.50. And even those that were for $2 believe $1.50 with adequate look-back can achieve the goal. It is the single most important step we can take to reduce youth smoking.

More than a third of the Members of the Senate have already cosponsored bills proposing $1.50 increase, because, as our colleagues know, the Budget Committee endorsed a $1.50 increase on a bipartisan vote, 14 to 8, in March. Last Thursday, a bipartisan majority of the Finance Committee voted for a cigarette price increase of $1.50. Too many young people are at stake for us to ignore the advice of all of our public health experts. Those efforts were bipartisan. Just as Dr. Koop speaks for Republicans and Democrats, those efforts were bipartisan in the Finance Committee and the Budget Committee. It should be bipartisan tomorrow.

The American people have had enough of the tobacco industry's distortions and denials about the addictiveness of nicotine. They have had enough of the industry's cynical marketing of cigarettes to children. They have had enough of the industry's

decades-long coverup of the health risks associated with smoking.

This is an industry which once argued that cigarettes are no more addictive than Gummy Bears. This is an industry that used Joe Camel in advertising, blatantly designed to hook children on smoking. Now they ask us to believe that a $1.50 increase will lead to the bankruptcy of big tobacco and a rampant black market for illegal cigarettes. That argument by big tobacco has no more credibility than any of the other false arguments that have been made over the past 30 years and more. Over the years, big tobacco has proved itself to be the master of the big lie. Congress should have learned this lesson long ago, and it is time to trust the Nation's public health leaders, not big tobacco's public health prevaricators.

The tobacco companies have known these facts about addiction. For years they have been fully aware that they need to persuade children to take up smoking in order to preserve their future profits. That is why big tobacco has targeted children, the billions of dollars in advertising and promotional giveaways, their promise of popularity, excitement, and success for young men and women who take up smoking.

The recent documents released in the Minnesota case against the industry reveal the vast extent of the industry's marketing strategy to children. In the 1981 Philip Morris memo entitled ''Young Smokers, Prevalence, Implications, Related Demographic Trends,'' the authors wrote that it is important to know as much as possible about teenage smoking patterns and attitudes. ''Today's teenager is tomorrow's potential regular customer and the overwhelming majority of smokers first beginning to smoke while still in their teens and the smoking patterns of teenagers are particularly important to Philip Morris. Furthermore, it is during the teenage years that the initial choice is made.''

If nothing is done to reverse this trend in adolescent smoking, the Centers for Disease Control and Prevention estimate 5 million of today's children will die prematurely from smoke-caused illnesses. Five million of today's children will die from smoke-caused illnesses. The American public has had enough of the daily tragedy of death and disease caused by tobacco use. The tobacco industry has literally had a license to kill for many decades. Now the license is being revoked and Americans are demanding dramatic action by Congress to drastically curb youth smoking.

This Congress will be judged, in large measure, by whether or not we respond effectively to that challenge, and increasing cigarette prices by $1.50 is the most effective way to reduce teenage smoking. The public health community agrees it is the minimum increase needed to achieve 60 percent over 10 years.

The $1.50 has the broad support of the health community, and it deserves the broad support of the U.S. Senate as well.

In conclusion, I want to mention again what this issue is all about, and that is what this amendment will do for the young people of this country.

We have the $1.10 increase over a 5-year period that is in the measure that is before us this evening. The measure that we offer will raise the price of cigarettes by $1.50. The number of children whose lives will be saved by the cigarette price increase by $1.10, over what it would otherwise be, will be 1 million; increasing cigarettes by $1.50, an additional 1.25 million. There is for every 10 percent, some 7-percent increase in reduced teenage smoking.

The difference from the $1.10 and the $1.50 is 750,000 in terms of those teenagers who will smoke—750,000. Mr. Koop said today the new studies would bring it up to 900,000. But we are talking between 750,000 to 900,000 children, of which some 300,000 of those will die prematurely. We can save those children. We can save the 750,000 who would otherwise smoke, and we can say to the 300,000 young people, the children in America today, ''We can save your lives as well.'' The question is, Are we willing to take that step to raise the cost by $1.50?

I certainly hope we will, Mr. President. I point out that even raising it by $1.50, we will be where most of the European countries are. Even with the $1.50 increase, the United States will be at $3.59; France at $3.50; United Kingdom at $4.40; Denmark at $5.10; and Norway at $6.82. We will be right in the middle of the industrial nations of the world.

Let me say, the tobacco industry makes profits on all of those countries. The tobacco industry makes generous profits from all of these countries that are a good deal higher than even the $3.50, as well as from the other countries.

Mr. President, this actually is a modest step, a very modest step, but one that is necessary in order to protect the young people of this country. I hope we will do so tomorrow when the roll is called.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate will stand in adjournment until tomorrow, May 20, at 9:30 a.m.

Thereupon, the Senate, at 8:23 p.m., adjourned until Wednesday, May 20, 1998, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate May 19, 1998:

THE JUDICIARY

CARL J. BARBIER, OF LOUISIANA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA, VICE OKLA JONES, II, DECEASED.