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Tobacco Bills [4]

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of the United States subject to a final disposition of the petition.

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

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

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

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

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

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

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

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

(3) APPEALS.—

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

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

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

TITLE VII—PROVISIONS RELATING TO TOBACCO-RELATED CIVIL ACTIONS [Constitutionality?]

SEC. 701. GENERAL IMMUNITY.

(a) STATE ATTORNEY GENERAL ACTIONS.—

(1) PENDING ACTIONS.—Civil actions that have been commenced by a State or local governmental entity, or on behalf of such an entity, against a

manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612, and that are pending on the date of enactment of this Act are terminated.

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

(b) OTHER ACTIONS.—

(1) CLASS ACTIONS.—

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

(B) FUTURE ACTIONS.—A manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612 shall be immune from any class action commenced after the date of enactment of this

Act for all claims arising from the use of a tobacco product.

(2) ADDICTION AND DEPENDENCE CLAIMS.—

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

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

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

SEC. 702. CIVIL LIABILITY FOR PAST CONDUCT.

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

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

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

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

(e) PERMISSIBLE PARTIES.—

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

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

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

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

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

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

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

(h) CAPS ON SETTLEMENTS.—

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

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

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

(4) INDIVIDUAL CAP.—With respect to an action to which this section applies, any amount

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

(5) UNUSED PORTION OF CREDIT.—[Policy not clear]

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

SEC. 703. CIVIL LIABILITY FOR FUTURE CONDUCT.

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

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

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

SEC. 704. NON-PARTICIPATING MANUFACTURERS.

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

TITLE VIII—PUBLIC DISCLOSURE OF HEALTH RESEARCH

SEC. 801. PURPOSE.

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

SEC. 802. NATIONAL TOBACCO DOCUMENT DEPOSITORY.

(a) ESTABLISHMENT.—To be eligible to receive the protections provided under title VII, manufacturers of tobacco products, acting in conjunction with the Tobacco Institute and the Council for Tobacco Research, U.S.A.

(prior to the termination of such entities under section 155), shall, not later than ____ days after the date of enactment of this Act, establish and maintain a National Tobacco Document Depository (in this title referred to as the "Depository"). Such Depository shall be located in the Washington, D.C. area and be open to the public.

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

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

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

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

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

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

(D) the *Haines* and *Cippollone* actions [need formal case title]; and

(E) the *Butler* action in Mississippi [need formal case title];

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

(3) within ____ days of the date of enactment of this Act, all documents relating to indices (as defined by the court in the Minnesota Attorney General action [need formal case title]) of documents relating to smoking and health, including all incides identified by the manufacturers in the Washington,

Texas, and Minnesota Attorney General actions [need formal case titles];

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

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

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

(7) all existing or future documents relating to studies of the smoking habits of minors or docu-

ments referring to any relationship between advertising and promotion and underage smoking; and

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

(d) DISPUTE RESOLUTION PANEL.—

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

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

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

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

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

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

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

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

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

(e) OTHER PROVISIONS.—

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

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

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

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

TITLE IX—EFFECTIVE DATES AND OTHER PROVISIONS

SEC. 901. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), and as otherwise provided in this Act, the provisions of this Act shall take effect on the date of enactment of this Act.

(b) EXCEPTIONS.—The following provisions shall become effective as follows:

(1) The retail tobacco product display provisions under subtitle A of title I shall be applicable to retailers on the date that is 9 months after the date of enactment of this Act.

(2) The provisions relating to the display of tobacco product signs and displays by retailers under subtitle A of title I shall be applicable to retailers on the date that is 5 months after the date of enactment of this Act.

(3) The provisions of subtitle A of title I relating to advertising shall be applicable on the date that is 9 months after the date of enactment of this Act.

(4) The labeling requirements of subtitle A of title I and of chapter 9 of the Federal Food, Drug and Cosmetic Act (as added by section 143(3) of

this Act) shall be applicable (as determined under regulations promulgated by the Secretary) with respect to—

(A) ⅓ of all tobacco product packages, on the date that is 90 days after the date of enactment of this Act;

(B) ⅓ of all tobacco product packages, on the date that is 120 days after the date of enactment of this Act; and

(C) ⅓ of all tobacco product packages, on the date that is 180 days after the date of enactment of this Act.

(5) The provisions of section 105 relating to the sponsorship of events shall be applicable on December 31, 1998.

(6) The provisions of section 121 shall be applicable on the date that is 3 months after the date of enactment of this Act.

(7) The provisions of section 122 relating to vending machines shall be applicable on the date that is 12 months after the date of enactment of this Act.

(8) The provisions of section 122 relating to minimum package size shall be applicable on the

date that is 3 months after the date of enactment of this Act.

(9) The provisions of section 122 relating to vending machines shall be applicable on the date that is 12 months after the date of enactment of this Act.

(10) The provisions of section 122 relating to sampling shall be applicable on the date that is 3 months after the date of enactment of this Act.

(11) The provisions of section 909 of the Federal Food, Drug and Cosmetic Act (as added by section 143(3) of this Act) relating to good manufacturing practices shall be applicable on the date that is 24 months after the date of enactment of this Act or on a date determined appropriate by the Secretary.

(12) The provisions of subtitle F of title I relating to corporate compliance shall be applicable on the date that is 12 months after the date of enactment of this Act.

SEC. 902. NATIVE AMERICANS.

(a) INDIAN COUNTRY.—The provisions of this Act (or an amendment made by this Act) shall apply to the manufacture, distribution, and sale of tobacco products within Indian country.

(b) INDIAN TRIBES.—To the extent that an Indian tribe or tribal organization engages in the manufacture, distribution, or sale of tobacco products, the provisions of this Act (or an amendment made by this Act) shall apply to such tribe or organization.

(c) PAYMENTS TO TRUST FUND.—Any Indian tribe or tribal organization that engages in the manufacturer of tobacco products shall be subject to liability under section 402, or shall be considered a non-participating manufacturer for purposes of section 613, and shall be subject to surcharges under section 205.

(d) APPLICATION OF FDA REQUIREMENTS.—

(1) IN GENERAL.—The Secretary shall promulgate regulations to provide for the application of the requirements of the Food, Drug and Cosmetic Act to tobacco products manufactured, distributed, or sold within Indian country.

(2) ELIGIBILITY FOR ASSISTANCE.—Under the regulations promulgated under paragraph (1), the Secretary may provide assistance to an Indian tribe or tribal organization in meeting and enforcing the requirements under such regulations if—

(A) the tribe or organization has a governing body that has powers and carries out duties that are similar to the powers and duties of State or local governments;

(B) the functions to be exercised through the use of such assistance relate to activities on lands within the jurisdiction of the tribe or organization; and

(C) the tribe or organization is reasonably expected to be capable of carrying out the functions required by the Secretary.

(e) RETAIL LICENSING REQUIREMENTS.—

(1) IN GENERAL.—The requirements of subtitle D of title I shall apply to retailers that sell tobacco products within Indian country.

(2) SELF-REGULATION.—The Secretary shall promulgate regulations to permit the Indian tribe or tribal organization with jurisdiction over the lands involved to implement a tribal licensing program that is at least as strict as the program in operation in the State in which the land involved is located.

(3) IMPLEMENTATION BY SECRETARY.—If the Secretary determines that the Indian tribe or tribal organization is not qualified to administer the requirements of subtitle D of title I, the Secretary shall implement such requirements on behalf of the

tribe or organization or delegate such authority to the State involved.

(f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), an Indian tribe or tribal organization shall be considered a State for purposes of eligibility under title V.

(2) PUBLIC HEALTH PROGRAM.—

(A) IN GENERAL.—Each State that receives a payment under section 502 shall set-aside not less than ____ percent of such payment for use by Indian tribes or tribal organizations within the State.

(B) AMOUNT.—The amount of any funds under subparagraph for which an Indian tribe or tribal organization is eligible shall be determined by the State based on the proportion of the registered members of the tribe involved as compared to the total population of all such registered members in the State.

(C) USE.—Amounts provided to a tribe or organization under this paragraph shall be used as provided for in section 504 and in accordance with a plan submitted by the tribe or organization and approved by the Secretary as being in compliance with this Act.

(D) REALLOTMENT.—Any amounts set-aside and not expended under this paragraph shall be reallotted among other eligible tribes and organizations.

(g) OBLIGATION OF MANUFACTURERS.—

(1) PROHIBITION.—A manufacturer shall not engage in any activity within Indian country that is otherwise prohibited under this Act (or an amendment made by this Act).

(2) LIMITATION ON SALE.—A manufacturer shall not sell or otherwise distribute a tobacco product for subsequent manufacture, distribution, or sale to an Indian tribe or tribal organization, or provide such products to a manufacturer, distributor, or retailer that is subject to the jurisdiction of a tribe or organization, except under the same terms and conditions as the manufacturer imposes on other manufacturers, distributors, or retailers.

(h) DEFINITIONS.—In this section:

(1) INDIAN COUNTRY.—The term "Indian country" has the meaning given such term by section 1151 of title 18, United States Code.

(2) INDIAN TRIBE.—The term "Indian tribe" has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(3) TRIBAL ORGANIZATION.—The term "tribal organization" has the meaning given such term in section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 903. PREEMPTION.

(a) GENERAL PREEMPTION.—Except as otherwise provided for in this section, nothing in this Act shall be construed as prohibiting a State from imposing requirements, prohibitions, penalties or other measures to further the purposes of this Act that are in addition to the requirements, prohibitions, or penalties required under this Act. To the extent not inconsistent with the purposes of this Act, State and local governments may impose additional tobacco product control measures to further restrict or limit the use of such products by minors.

(b) ENFORCEMENT.—A State may not impose obligations or requirements relating to the enforcement of this Act in a manner that conflicts with the provisions of title VI.

(c) PUBLIC EXPOSURE TO SMOKE.—Nothing in title III shall be construed to preempt or otherwise affect any other Federal, State or local law which provides [greater] protection from the health hazards of environmental tobacco smoke.

(d) TAXES.—Nothing in this Act shall be construed to prohibit a State from imposing taxes on tobacco products or tobacco product manufacturers, distributors, or retailers.

(e) NATIVE AMERICANS.—Except as provided in section 902, a State may not impose obligations or requirements relating to the application of this Act to Indian tribes and tribal organizations.

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The Public Health and Education Resource (PHAER) Act

Introduced by Sen. Frank R. Lautenberg (D-NJ) & Rep. James V. Hansen (R-UT)

Section-by-Section Summary

Section 101 – Imposition and Use of Increased Taxes on Tobacco Products

Cigarette Tax

The excise tax will be phased in as follows:

Year	Increase	Total tax per pack
1999	$0.50	$0.74
2000	$0.50 (plus $0.10 from BBA)	$1.34
2001	$0.50	$1.84
2002	$0.00 (plus $0.05 from BBA)	$1.89
2003	*Tobacco tax annually indexed to CPI, Medical CPI, or 3 percent, whichever is greater*	

Other Tobacco Products

- All taxes on other tobacco products are increased proportionally.

Indexing

- The tobacco taxes will be annually indexed by the CPI, the Medical CPI or 3 percent, whichever is greater.

Floor Stocks Taxes

- All tobacco products that have been distributed by the manufacturer before the increase in taxes called for periodically in this bill shall be taxed at the new rate.

Section 102 -- Tax Treatment for Certain Tobacco-Related Expenses

- The increased taxes contained in this bill will be nondeductible for the tobacco companies.

Section 201

- A new Trust Fund is created: The Public Health and Education Resource fund. This Trust Fund will be created in the Department of the Treasury.

The Secretary of Health and Human Services shall distribute 75 percent of the annual amounts collected in the Trust Fund to the States for the following programs:

(not less than/ nor more than)	
10/30*	Tobacco education and prevention programs in schools
10/30	Smoking cessation programs
10/30	Counter advertising programs
10/25	State Children's Health Insurance Program
5/10	WIC/Maternal Child Health Services Block Grant
1/3	ASSIST and other local tobacco control programs
0/5	State health block grant

Allocation Rules

- Each state grant level will be based on the percentage agreed upon by the Attorneys General in their Report by the Allocation Subcommittee on September 16, 1997.

Maintenance of Effort

- States must maintain the same spending on current programs that they spent the year before.

Federal Funding

Twenty-five percent of the annual amounts collected in the Trust Fund shall go to the following Federal programs:

- 10 percent for FDA's tobacco control efforts
- 25 percent for USDA programs to assist tobacco farmers and rural communities
- 20 percent for CDC's tobacco control efforts and NIH
- 20 percent for Medicare preventive benefits and increased support for low income Medicare beneficiaries (QMBs and SLMBs)
- 20 percent for HHS' tobacco counter advertising
- 2 percent for USAID's efforts to decrease tobacco consumption overseas
- 2 percent for Tobacco prevention programs at the Office of National Drug Control Policy (Drug Czar)
- 1 percent for the VA to conduct tobacco education, intervention and outreach programs

Section 301 -- Federal Standards with Respect to Tobacco Products

Repeals Federal preemption of state tobacco laws and regulations.

Section 401 -- Sense of the Senate Regarding Comprehensive Tobacco Legislation

ENACT

Effective National Action to Control Tobacco

- A Public Health Coalition -

American Academy of Family Physicians
American Academy of Pediatrics
American Cancer Society
American College of Chest Physicians
American College of Preventive Medicine
American Heart Association

American Medical Association
Association of State & Territorial Health Officials
Campaign for Tobacco-Free Kids
National Association of County and City Health Officials
Partnership for Prevention

October 28, 1997

The Honorable Frank R. Lautenburg
United States Senate

The Honorable James V. Hansen
United States House of Representatives

Dear Senator and Congressman:

On behalf of our millions of public health officials and professionals, health care providers and volunteer members of ENACT, the coalition for Effective National Action to Control Tobacco, we applaud the introduction of the Public Health and Education Resource (PHAER) Act.

We particularly want to thank you for your leadership in reaffirming what the members of the coalition have said in the ENACT consensus statement regarding increases in the cost of tobacco products. Experts in the area of tobacco control agree that significant increases in the cost per pack deter children and others from taking up the use of tobacco. The ENACT coalition believes strongly that such an increase in the federal excise tax is essential.

In addition to providing for a \$1.50 excise tax per pack, indexed to inflation, and the nondeductibility of those new taxes, you have addressed many essential public health programs. Adequate funding of these programs is integral to comprehensive, sustainable, effective, well-funded tobacco control legislation. We look forward to working with you and the supporters of your legislation to get action on tobacco now.

Signed,

American Academy of Pediatrics
American Cancer Society
American College of Preventive Medicine
American Heart Association
American Medical Association
Campaign for Tobacco Free Kids
National Association of County and City Health Officials
Partnership for Prevention

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Founded in 1904, the American Lung Association includes affiliated associations throughout the U.S. and a medical section, the A ican Thoracic Society.

AMERICAN LUNG ASSOCIATION®

October 23, 1997

The Honorable Frank Lautenberg
United States Senate
Washington, D.C. 20510

Dear Senator Lautenberg:

The American Lung Association commends you on the introduction of the Public Health and Education Resource Act (PHAER). As you know, the American Lung Association has pursued a significant price increase in the federal cigarette excise tax for many years.

Tobacco use is the nation's leading preventable cause of death and disability. Each year an estimated 419,000 people die from diseases directly caused from smoking. Three thousand children start smoking each day in this country. One thousand of them will eventually die from a smoking-related disease. Smoking costs this nation at least $97.2 billion annually. Of that total cost, $22 billion is paid by the Federal government. Over the next 20 years, Medicare alone will spend an estimated $800 billion to care for people with smoking related illnesses.

Reducing tobacco consumption among our nation's youth has long been a goal of the American Lung Association. The bulk of academic research indicates that a sharp and sudden increase in the price of tobacco products has the effect of lowering smoking rates among teens. Raising the price per pack by at least $1.50 or more would help achieve that desired outcome.

The American Lung Association applauds your continued efforts and leadership in reducing tobacco consumption, especially among our youth, and we look forward to working with you as this tobacco-related legislation progresses through Congress.

Sincerely,

Fran DuMelle

Fran DuMelle
Deputy Managing Director

NACo National Association of Counties

October 23, 1997

The Honorable Frank R. Lautenberg
United States Senate
SH-506 Hart Senate Office Building
Washington, D.C. 20510-3002

Dear Senator Lautenberg:

The National Association of Counties (NACo) is pleased to support your bill, the Public Health and Education Resource (PHAER) Act. The legislation is a strong step forward for public health activities related to tobacco and helps focus the congressional debate on legislative language rather than broad concepts.

We particularly support your recognition of the role of counties and other local governments in the provision of health services. Counties, in collaboration with states, will be key to the success of the public health programs outlined in the PHAER trust fund, including tobacco education and prevention, smoking cessation, and counter advertising. NACo appreciates your work to ensure a local government role in the planning and implementation of the trust fund's health activities.

Thank you again for your leadership on this issue. Dan Katz of your staff has been very responsive to our concerns. NACo looks forward to working with you and your staff as tobacco legislation moves forward.

Very Truly Yours,

Randy Johnson

Randy Johnson, President, NACo
Hennepin County Commissioner

440 First Street, NW
Washington, DC 20001-2080
202/393-6226
Fax 202/393-2630

BR/EK/JM
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Tom

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 CQ's WASHINGTON ALERT 11/03/97

*** FULL REPORT -- DIGEST, LEGISLATIVE ACTION, COSPONSORS, SPEECHES ***

MEASURE: HR2740

SPONSOR: McInnis (R-CO)

OFFICIAL TITLE: A bill to limit attorneys' fees in the tobacco settlement.

QUICK REFERENCE: Limit attorneys' fees in global tobacco settlement

INTRODUCED: 10/24/97

COSPONSORS: 2 (Dems: 1 Reps: 1 Ind: 0)

COMMITTEES: House Judiciary

CQ BILLWATCH BRIEF:

By Pherabe Kolb, CQ Staff Writer

HR2740 would limit the amount of money that attorneys could receive for working on the legal settlement between the states' attorneys general and the tobacco industry.

Bill sponsor Scott McInnis, R-Colo., said although tobacco companies are expected to pay as much as $368.5 billion to states for the Medicaid costs of treating individuals with smoking-related illnesses, nearly $111 billion of those funds likely will be used to cover the legal fees of hundreds of lawyers who worked on the deal.

"While attorneys are entitled to be paid for their time and effort," the bill states, "the maximum possible amount of moneys from any tobacco settlement should go directly to benefit public health."

The bill would limit attorneys' fees to $150 per hour and reimbursement of out-of-pocket expenses.

Before any lawyers could receive their payments, they would have to submit a detailed billing statement to Congress and the public to account for the time they worked.

CQ BILLWATCH INSIGHT:
No action has been scheduled on HR2740, which was referred to the House

Judiciary Committee.

LEGISLATIVE ACTION:

10/24/97 Referred to Committee on the Judiciary (CR p. H9558)

10/24/97 Original Cosponsor(s): 2
Cox (R-CA) McHale (D-PA)

There are no more items to display.

Results: 1 items in BILLTRACK
Search criteria used:
BILL:HR2740
Results are: Bill number as entered

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Results: 1 items in BILLTEXT
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   RESEARCH BILL:HR2740
Results are:
   Sorted by bill number with version in ascending order

                         *SEARCH/DISPLAY OPTIONS*

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 2 REFINE your search on prime topic      8 OUTLINE list of bill subdivisions
 3 SORT retrieved versions                9 BROWSE peruse terms in context
 4 SAVE bill numbers in a list           10 EXCERPT continuous context display
 5 GRAPH relevance ranking               11 READ for text of bill version(s)
 6 SCAN for list of bill versions        12 RESEARCH Bills in other databases

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CQ's WASHINGTON ALERT 11/03/97

HR2740 McInnis (R-CO) 10/24/97 (112 lines)
Introduced in House

To limit attorneys' fees in the tobacco settlement.

Special typefaces used in this bill version:
// \\ Italic
!! !! Bold roman
Item Key: 6802

--- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- ---

105TH CONGRESS
1ST SESSION

H. R. 2740

To limit attorneys' fees in the tobacco settlement.

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IN THE HOUSE OF REPRESENTATIVES

October 24, 1997

Mr. MCINNIS (for himself, Mr. COX of California, and Mr. MCHALE) introduced the following bill; which was referred to the Committee on the Judiciary

=======================

A BILL

To limit attorneys' fees in the tobacco settlement.

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

!!SECTION 1. FINDINGS.!!

Congress makes the following findings:

(1) Under the proposed settlement between the tobacco industry and the various State Attorneys General, the attorneys involved in negotiating the settlement are entitled to reasonable fees.

(2) Under the proposed settlement, the tobacco companies would pay $368,500,000,000 to be allocated among various public

health programs.

(3) It is expected that of the total tobacco settlement of $368,500,000,000 as much as $111,000,000,000 could be taken away from public health programs for attorneys' "contingency fees".

(4) Since no national settlement can take effect without Congressional action to change existing law, the approval of Congress is necessary for the terms of the settlement, including the part relating to attorneys' fees, to take effect.

(5) While the average annual gross receipts for the 100 top-grossing law firms in America last year was $18,000,000, a 30 percent contingency fee would yield an average of approximately $925,000,000 per law firm involved in the litigation pending prior to the settlement.

(6) A casual decision at a young age to use tobacco products often leads to addiction, serious disease, and premature death as an adult. Nearly 90 percent of adult smokers began smoking at or before the age of 18. Smoking rates among youngsters are at their highest levels in 16 years. Every day another 3,000 children and adolescents become regular smokers. Therefore, the epidemic of youth addiction has enormous public health consequences.

(7) While attorneys are entitled to be paid for their time and effort, the maximum possible amount of moneys from any tobacco settlement should go directly to benefit public health, with the highest priority being given to efforts focused on persuading children not to smoke rather than to awards leading to unreasonable attorneys' fees.

!!SEC. 2. LIMIT ON DIVERSION OF PUBLIC HEALTH FUNDS TO ATTORNEYS.!!

(a) GENERAL LIMITATION.--Notwithstanding any other provision of law, any attorneys' fees paid in connection with the settlement of an action maintained by a State against 1 or more tobacco companies to recover tobacco-related medicaid expenditures or for other causes of action involved in the settlement agreement dated June 20, 1997, shall not exceed $150 per hour, together with reimbursement of actual out-of-pocket expenses as approved by the court in such action.

(b) FEE ARRANGEMENTS.--Subsection (a) 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); or
(6) other arrangement providing for the payment of attorneys' fees.

(c) REQUIREMENTS.--No award of attorneys' fees shall be made under any national tobacco settlement until the attorneys involved have--

(1) provided to the Congress a detailed time accounting

with respect to the work performed in relation to any legal action which is the subject of the settlement or with regard to the settlement itself; 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 any legal action that is the subject of the settlement.

(d) EFFECTIVE DATE.--The limitation on the payment of attorneys' fees contained in this section shall become effective on the date of enactment of any Act enacted in connection with the national tobacco settlement.

(e) REPORT.--Each attorney whose fees are subject to this section shall, within 30 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.

There are no more items to read.

Results: 1 items in BILLTEXT
Search criteria used:
RESEARCH BILL:HR2740
Results are:
Sorted by bill number with version in ascending order

SEARCH/DISPLAY OPTIONS

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 1 NARROW your search                      7 CITE display bill citations
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 CQ's WASHINGTON ALERT 11/03/97

*** FULL REPORT -- DIGEST, LEGISLATIVE ACTION, COSPONSORS, SPEECHES ***

MEASURE: HConRes140

SPONSOR: McInnis (R-CO)

OFFICIAL TITLE: Concurrent resolution expressing the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

QUICK REFERENCE: Express sense of Congress that legal fees for tobacco settlement be disclosed

INTRODUCED: 07/31/97

COSPONSORS: 0 (Dems: 0 Reps: 0 Ind: 0)

COMMITTEES: House Judiciary

CQ BILLWATCH BRIEF:

By Emily Pierce, CQ Staff Writer

HCONRES140 would ask that lawyers representing the states in the recent tobacco settlement disclose their fees.

On June 20, 1997, the tobacco industry reached a $368.5 billion agreement with 40 states that sued to recover Medicaid funds for the costs of treating smoking-related illnesses. Tobacco companies agreed to make payments to the states over 25 years, and to Food and Drug Administration (FDA) regulation in exchange for immunity from future lawsuits. The agreement requires congressional approval for such issues as FDA regulation and advertising restrictions.

The resolution would express the sense of Congress that before any legislation codifying the settlement is enacted, the lawyers that represent the states should disclose their anticipated fees. Most of the states retained private attorneys to represent them in the tobacco lawsuits, and 25 of the 40 are using the same legal firm -- Scruggs, Millette of Mississippi.

Under the settlement, the tobacco companies agreed to pay the states' attorneys' fees separately from the $368.5 billion. Anticipated fees could be as much as 25 percent of the amount recovered -- almost $92 billion. Conservative estimates hover between $7 billion and $14 billion.

CQ BILLWATCH INSIGHT:
No action has been scheduled on HCONRES140, which was referred to the House Judiciary Committee.

CRS DIGEST:
Calls for each plaintiff attorney, before the consideration of any legislation regarding the comprehensive tobacco settlement, to fully disclose his or her anticipated fees as a result of such settlement agreement.

CRS SUBJECT INDEX TERMS:
- Law
- Actions and defenses
- Agriculture
- Business
- Congress
- Consumers
- Government and business
- Legal fees
- Legislation
- Medical care
- Medicine
- Politics and government
- Products liability
- Tobacco
- Tobacco industry
- Tobacco settlement

LEGISLATIVE ACTION:

07/31/97 Referred to Committee on the Judiciary (CR p. H6705)

There are no more items to display.

Results: 1 items in BILLTRACK
Search criteria used:
BILL:HCONRES140
Results are: Bill number as entered

SEARCH/DISPLAY OPTIONS

1 NARROW your search	13 DETAIL action, amendments, speeches
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HCONRES140 McInnis (R-CO) 07/31/97 (50 lines)
Introduced in House

Expressing the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

Special typefaces used in this bill version:
// \\ Italic
Item Key: 5446

105TH CONGRESS
1ST SESSION

H. CON. RES. 140

Expressing the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

======================

IN THE HOUSE OF REPRESENTATIVES

July 31, 1997

Mr. MCINNIS submitted the following concurrent resolution; which was referred to the Committee on the Judiciary

======================

CONCURRENT RESOLUTION

Expressing the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

Whereas the average American earned $25,852 in 1994;

Whereas the average Colorado citizen earned $74 per day in 1995;

Whereas the average hourly wage earner earns $12.14 per hour in the United States;

Whereas those involved in negotiating a comprehensive tobacco settlement are entitled to reasonable compensation for their services; and

Whereas : Now, therefore, be it

//Resolved by the House of Representatives (the Senate concurring)\\ That it is the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

There are no more items to read.

Enter one or more numbers or ALL to display item(s),
Enter another display command and one or more numbers or ALL,
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Enter SMARTMATCH and a number to find comparable items,
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Bills w/ attorney fees & tobacco

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  1    HConRes140  McInnis (R-CO)           07/31/97
       Concurrent resolution expressing the sense of Congress that before
       the consideration of any legislation regarding the comprehensive
       tobacco settlement each plaintiff attorney shall fully disclo
se
       the attorney's anticipated fees as a result of such settlemen
t
       agreement.
       (BILLTRACK; BillWatch 08/28/97; CRS 10/06/97 -- digest 26 lines)
       Item Key: 4098
--- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- ---
  2    HR2264      Porter (R-IL)            07/25/97
       A bill making appropriations for the departments of Labor, Health
       and Human Services, and Education, and related agencies for the
       fiscal year ending Sept. 30, 1998, and for other purposes.
       (BILLTRACK; BillWatch 09/25/97; CRS 10/22/97 -- digest 656 lines)
       Item Key: 3931
--- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- ---
  3    S1061       Specter (R-PA)           07/24/97
       An original bill making appropriations for the Departments of
       Labor, Health and Human Services, and Education, for the fiscal
       year ending Sept. 30, 1998, and for other purposes.
       (BILLTRACK; BillWatch 09/24/97; CRS 10/22/97 -- digest 626 lines)
       Item Key: 3885
--- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- ---
  4    HR2740      McInnis (R-CO)           10/24/97
       A bill to limit attorneys' fees in the tobacco settl
ement.
       (BILLTRACK; BillWatch 10/31/97; no CRS information available)
       Item Key: 4867
--- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- ---
Enter one or more numbers or ALL to display item(s),
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Enter MARK or SAVE and one or more numbers to limit or save your set,
Enter SMARTMATCH and a number to find comparable items,
Or enter BACK, HELP, or STOP
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FRANK R. LAUTENBERG
UNITED STATES SENATOR
NEW JERSEY

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United States Senate
WASHINGTON, D.C. 20510

Telecopier Sheet

TO: Gerry Mande

FROM: Dan Katz
voice: 224-1832
fax: 224-9707

DATE: October 28, 1997

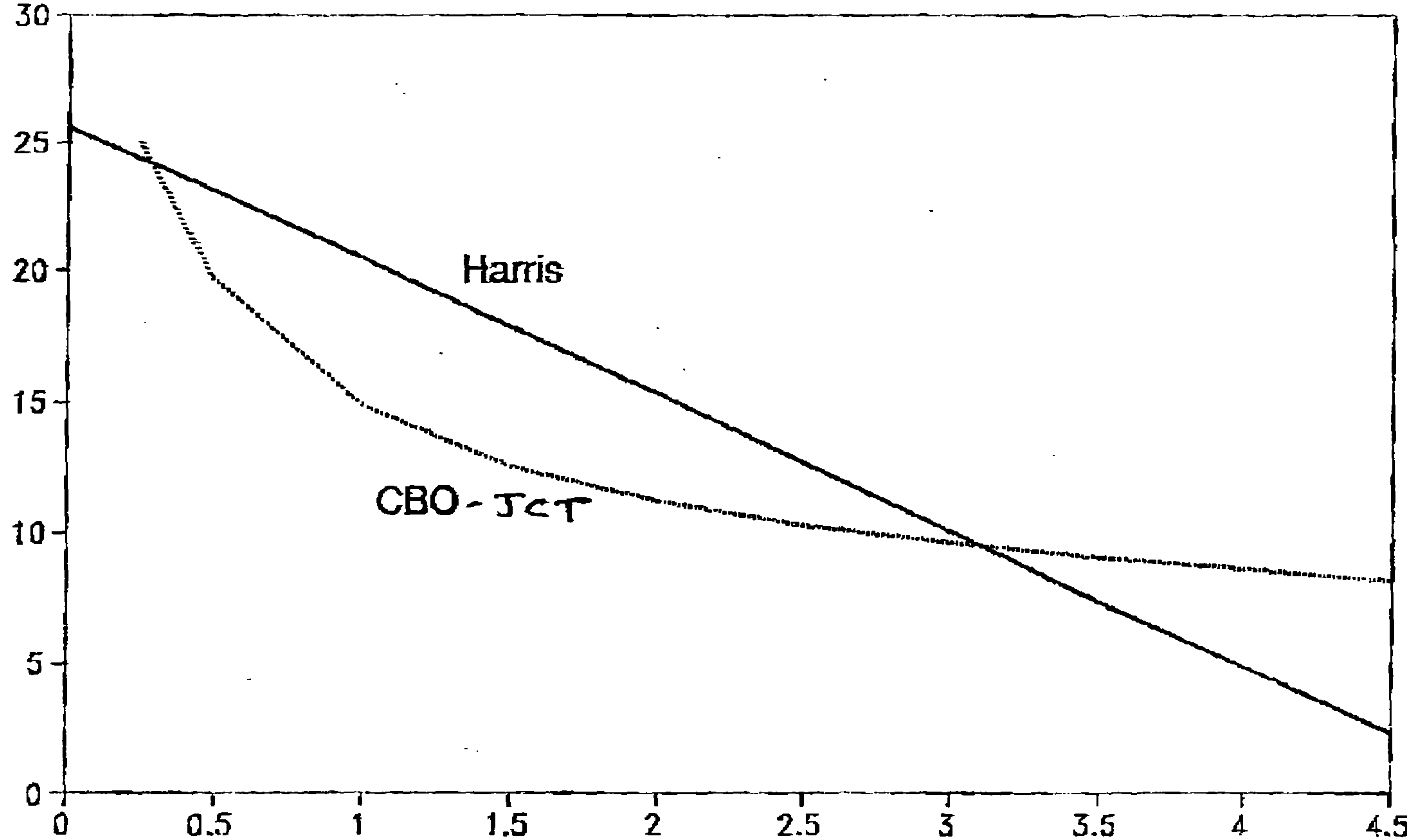
PAGES: 6

Comments: Info on our tobacco tax bill. Remember - these projections are based on minimum indexing of 3% (and JCT-CBO consumption curve). We use Medical CPI as a factor, which will mean larger revenues. In addition, our bill would index the entire tobacco excise tax in the fifth year, with the additional revenue going towards our fund. (We get $494 billion over 25 years.)

We will likely drop it tomorrow. I will call Sander in to our meeting on Thursday to discuss the revenue projections. See you then...

Cigarette Consumption

as a Function of the Tax Level



The Public Health and Education Resource (PHAER) Act

Introduced by Sen. Frank R. Lautenberg (D-NJ) & Rep. James V. Hansen (R-UT)

Section-by-Section Summary

Section 101 -- Imposition and Use of Increased Taxes on Tobacco Products

Cigarette Tax

The excise tax will be phased in as follows:

Year	Increase	Total tax per pack
1999	$0.50	$0.74
2000	$0.50 (plus $0.10 from BBA)	$1.34
2001	$0.50	$1.84
2002	$0.00 (plus $0.05 from BBA)	$1.89
2003	*Tobacco tax annually indexed to CPI, Medical CPI, or 3 percent, whichever is greater*	

Other Tobacco Products

- All taxes on other tobacco products are increased proportionally.

Indexing

- The tobacco taxes will be annually indexed by the CPI, the Medical CPI or 3 percent, whichever is greater.

Floor Stocks Taxes

- All tobacco products that have been distributed by the manufacturer before the increase in taxes called for periodically in this bill shall be taxed at the new rate.

Section 102 -- Tax Treatment for Certain Tobacco-Related Expenses

- The increased taxes contained in this bill will be nondeductible for the tobacco companies.

Section 201

- A new Trust Fund is created: The Public Health and Education Resource fund. This Trust Fund will be created in the Department of the Treasury.

The Secretary of Health and Human Services shall distribute 75 percent of the annual amounts collected in the Trust Fund to the States for the following programs:

(not less than/ nor more than)	
10/30*	Tobacco education and prevention programs in schools
10/30	Smoking cessation programs
10/30	Counter advertising programs
10/25	State Children's Health Insurance Program
5/10	WIC/Maternal Child Health Services Block Grant
1/3	ASSIST and other local tobacco control programs
0/5	State health block grant

Allocation Rules

- Each state grant level will be based on the percentage agreed upon by the Attorneys General in their Report by the Allocation Subcommittee on September 16, 1997.

Maintenance of Effort

- States must maintain the same spending on current programs that they spent the year before.

Federal Funding

Twenty-five percent of the annual amounts collected in the Trust Fund shall go to the following Federal programs:

- 10 percent for FDA's tobacco control efforts
- 25 percent for USDA programs to assist tobacco farmers and rural communities
- 20 percent for CDC's tobacco control efforts and NIH
- 20 percent for Medicare preventive benefits and increased support for low income Medicare beneficiaries (QMBs and SLMBs)
- 20 percent for HHS' tobacco counter advertising
- 2 percent for USAID's efforts to decrease tobacco consumption overseas
- 2 percent for Tobacco prevention programs at the Office of National Drug Control Policy (Drug Czar)
- 1 percent for the VA to conduct tobacco education, intervention and outreach programs

Section 301 -- Federal Standards with Respect to Tobacco Products

Repeals Federal preemption of state tobacco laws and regulations.

Section 401 -- Sense of the Senate Regarding Comprehensive Tobacco Legislation

THE PHAER ACT: EFFECTS ON TAX REVENUES AND CIGARETTE PRICES

	Revenue generated for PHAER fund (in billions of dollars)			Taxes on a pack of cigarettes (in dollars)		
Year	*Proposed $1.50-per-pack tax, indexed for inflation*	*Inflation indexing of existing tobacco taxes*	*Total contributions to PHAER fund*	*Current law, indexed for inflation*	*PHAER, indexed for inflation*	*Total minimum inflation-adjusted tax per pack*
1998	n/a	n/a	n/a	$0.24	$0.00	$0.24
1999	$3.2	$0.0	$3.2	0.24	0.50	0.74
2000	7.4	0.0	7.4	0.34	1.00	1.34
2001	12.0	0.0	12.0	0.34	1.50	1.84
2002	11.8	0.0	11.8	0.39	1.50	1.89
2003	12.1	0.3	12.3	0.40	1.55	1.95
2004	12.6	0.5	13.2	0.41	1.59	2.01
2005	13.3	0.8	14.1	0.43	1.64	2.07
2006	14.2	1.1	15.3	0.44	1.69	2.13
2007	15.0	1.4	16.4	0.45	1.74	2.19
2008	15.8	1.7	17.5	0.47	1.79	2.26
2009	16.2	2.0	18.3	0.48	1.84	2.32
2010	16.7	2.3	19.1	0.49	1.90	2.39
2011	17.2	2.7	19.9	0.51	1.96	2.47
2012	17.7	3.0	20.8	0.52	2.02	2.54
2013	18.3	3.4	21.7	0.54	2.08	2.62
2014	18.8	3.7	22.6	0.56	2.14	2.69
2015	19.4	4.1	23.5	0.57	2.20	2.78
2016	20.0	4.5	24.5	0.59	2.27	2.86
2017	20.6	4.9	25.5	0.61	2.34	2.94
2018	21.2	5.3	26.5	0.63	2.41	3.03
2019	21.8	5.7	27.6	0.64	2.48	3.12
2020	22.5	6.2	28.7	0.66	2.55	3.22
2021	23.1	6.6	29.8	0.68	2.63	3.31
2022	23.8	7.1	30.9	0.70	2.71	3.41
2023	24.6	7.6	32.1	0.73	2.79	3.52
TOTAL	*$419.2*	*$75.1*	*$494.3*	n/a	n/a	n/a

Sources for 10-year, pre-inflation revenue estimates: Joint Committee on Taxation and Congressional Budget Office

Note: inflation indexing begins in 2003.

The Public Health and Education Resource (PHAER) Act

Introduced in the Senate by Sen. Frank R. Lautenberg (D-NJ)
and in the House by Rep. James V. Hansen (R-UT)

PHAER would raise the price of cigarettes to a level that would decrease youth smoking by half.

- PHAER would place a $1.50 Public Health and Education Resource (PHAER) per-pack fee on cigarettes and a comparable fee on other tobacco products.
- The PHAER fee would be phased in by 50-cent increments over three years.
- In the fourth year, the PHAER fee would be indexed for inflation to ensure that youth smoking does not rise again due to inflationary effects. This index will be based on the CPI, the Medical CPI or an increase of 3%, whichever is greater.
- The PHAER fee will raise approximately $494 billion over 25 years (using the tobacco consumption projections of the Joint Committee on Taxation), an average of almost $20 billion per year. Of these funds:

75% (an average of $15 billion per year) will be distributed at the *State* level for:

- Smoking cessation programs and services
- School and community-based tobacco education and prevention programs
- State-level counter-advertising campaigns
- ASSIST and similar community-based tobacco control programs
- Expansion of the Children's Health Insurance Program created in the 1997 Budget Reconciliation Act
- Early childhood development programs through the Maternal Child Health Block Grant and WIC
- Other appropriate public health uses

25% (an average of $5 billion per year) will be distributed at the *Federal* level for:

- Research and prevention programs at NIH and CDC
- FDA jurisdiction over tobacco products
- USDA programs to assist tobacco farmers, their families and their communities
- A national counter-advertising campaign
- Medicare prevention programs and premium and cost-sharing assistance for low-income Medicare beneficiaries
- International Programs to decrease worldwide tobacco-related illness
- The Drug Czar to conduct tobacco education and prevention programs
- The VA to conduct tobacco education, intervention and outreach programs.

3

105TH CONGRESS
1ST SESSION

S. ____

IN THE SENATE OF THE UNITED STATES

Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on ____________

A BILL

To amend the Internal Revenue Code of 1986 to increase the excise tax rate on tobacco products and deposit the resulting revenues into a Public Health and Education Resource Trust Fund, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Public Health and Education Resource (PHAER) Act".

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

TITLE I—IMPOSITION OF INCREASED TAXES ON TOBACCO PRODUCTS

SEC. 101. INCREASE IN EXCISE TAX RATE ON TOBACCO PRODUCTS IN ADDITION TO SUCH INCREASE CONTAINED IN THE BALANCED BUDGET ACT OF 1997.

(a) CIGARETTES.—Subsection (b) of section 5701 of the Internal Revenue Code of 1986 is amended—

(1) by striking "$12 per thousand ($10 per thousand on cigarettes removed during 1991 or 1992);" in paragraph (1) and inserting "the applicable rate per thousand determined in accordance with the following table:

"In the case of cigarettes removed during:	The applicable rate is:
1998	$12.00
1999	$37.00
2000	$67.00
2001	$92.00
2002	$94.50.";

and

(2) by striking paragraph (2) and inserting the following:

"(2) LARGE CIGARETTES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), on cigarettes, weighing more than 3 pounds per thousand, the applicable rate per thousand determined in accordance with the following table:

"In the case of cigarettes removed during:	The applicable rate is:
1998	$25.20
1999	$77.70
2000	$140.70
2001	$193.20
2002	$198.45.

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

(b) CIGARS.—Subsection (a) of section 5701 of such Code is amended—

(1) by striking "$1.125 cents per thousand (93.75 cents per thousand on cigars removed during 1991 or 1992)," in paragraph (1) and inserting "the

applicable rate per thousand determined in accordance with the following table:

"In the case of cigars removed during:	The applicable rate is:
1998	$1.125 cents
1999	$3.4687 cents
2000	$6.2822 cents
2001	$8.6264 cents
2002	$8.8588 cents.";

and

(2) by striking paragraph (2) and inserting the following:

"(2) LARGE CIGARS.—On cigars, weighing more than 3 pounds per thousand, the applicable percentage of the price for which sold but not more that the applicable rate per thousand determined in accordance with the following table:

In the case of cigars removed during:	The applicable percentage is:	The applicable rate is:
1998	12.750%	$30.00
1999	39.312%	$92.50
2000	71.189%	$167.50
2001	97.753%	$230.00
2002	100.407%	$236.25."

(c) CIGARETTE PAPERS.—Subsection (c) of section 5701 of such Code is amended to read as follows:

"(c) CIGARETTE PAPERS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), on each book or set of cigarette papers containing more than 25 papers, manufactured in or imported into the United States, there shall be imposed a tax of the applicable rate for each 50 papers or fractional part thereof as determined in accordance with the following table:

"In the case of cigarette papers removed during:	The applicable rate is:
1998	.75 cent
1999	2.31 cents
2000	4.18 cents
2001	5.74 cents
2002	5.91 cents.

"(2) EXCEPTION.—If cigarette papers measure more than 6½ inches in length, such cigarette papers shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper."

(d) CIGARETTE TUBES.—Subsection (d) of section 5701 of such Code is amended to read as follows:

"(d) CIGARETTE TUBES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), on cigarette tubes, manufactured in or imported into the United States, there shall be imposed a tax of the applicable rate for each 50 tubes or fractional part thereof as determined in accordance with the following table:

"In the case of cigarette tubes removed during:	The applicable rate is:
1998	1.50 cents
1999	4.62 cents
2000	8.39 cents

"In the case of cigarette tubes removed during:	The applicable rate is:
2001	11.53 cents
2002	11.82 cents.

"(2) EXCEPTION.—If cigarette tubes measure more than 6½ inches in length, such cigarette tubes shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube."

(e) SMOKELESS TOBACCO.—Paragraphs (1) and (2) of subsection (e) of section 5701 of such Code are is amended to read as follows:

"(1) SNUFF.—On snuff, the applicable rate per pound determined in accordance with the following table (and a proportionate tax at the like rate on all fractional parts of a pound):

"In the case of snuff removed during:	The applicable rate is:
1998	36 cents
1999	$1.11
2000	$2.01
2001	$2.76
2002	$2.835 cents.

"(2) CHEWING TOBACCO.—On chewing tobacco, the applicable rate per pound determined in accordance with the following table (and a proportionate tax at the like rate on all fractional parts of a pound):

"In the case of chewing tobacco removed during:	The applicable rate is:
1998	12 cents
1999	37 cents
2000	67 cents
2001	92 cents
2002	94.5 cents."

(f) PIPE TOBACCO.—Subsection (f) of section 5701 of such Code is amended to read as follows:

"(f) PIPE TOBACCO.—On pipe tobacco, manufactured in or imported into the United States, there shall be imposed a tax of the applicable rate per pound determined in accordance with the following table (and a proportionate tax at the like rate on all fractional parts of a pound):

"In the case of pipe tobacco removed during:	The applicable rate is:
1998	67.5 cents
1999	$2.0812 cents
2000	$3.7705 cents
2001	$5.1774 cents
2002	$5.3157 cents."

(g) IMPOSITION OF EXCISE TAX ON MANUFACTURE OR IMPORTATION OF ROLL-YOUR-OWN TOBACCO.—

(1) IN GENERAL.—Section 5701 of such Code (relating to rate of tax) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) ROLL-YOUR-OWN TOBACCO.—On roll-your-own tobacco, manufactured in or imported into the United States, there shall be imposed a tax of the applicable rate per pound determined in accordance with the following table (and a proportionate tax at the like rate on all fractional parts of a pound):

"In the case of roll-your-own tobacco removed during:	The applicable rate is:
1998	67.5 cents
1999	$2.0812 cents
2000	$3.7705 cents
2001	$5.1774 cents
2002	$5.3157 cents."

(2) ROLL-YOUR-OWN TOBACCO.—Section 5702 of such Code (relating to definitions) is amended by adding at the end the following new subsection:

"(p) 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."

(3) TECHNICAL AMENDMENTS.—

(A) Subsection (c) of section 5702 of such Code is amended by striking "and pipe tobacco" and inserting "pipe tobacco, and roll-your-own tobacco".

(B) Subsection (d) of section 5702 of such Code is amended—

(i) in the material preceding paragraph (1), by striking "or pipe tobacco" and inserting "pipe tobacco, or roll-your-own tobacco", and

(ii) by striking paragraph (1) and inserting the following new paragraph:

"(1) a person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person's own personal consumption or use, and".

(C) The chapter heading for chapter 52 of such Code is amended to read as follows:

"CHAPTER 52—TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES".

(D) The table of chapters for subtitle E of such Code is amended by striking the item relating to chapter 52 and inserting the following new item:

"CHAPTER 52. Tobacco products and cigarette papers and tubes."

(h) INFLATION ADJUSTMENT OF RATES AND FLOOR STOCKS TAXES.—Section 5701 of such Code, as amended by subsection (g), is amended by redesignating subsection (h) as subsection (j) and by inserting after subsection (g) the following:

"(h) INFLATION ADJUSTMENT.—In the case of a calendar year after 2002, the dollar amount contained in the table in each of the preceding subsections (and the percentage contained in the table contained in subsection (b)(2)) applicable to the preceding calendar year (after the application of this subsection) shall be increased by an amount equal to—

"(1) such dollar amount (or percentage), multiplied by

"(2) the greatest of—

"(A) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'the second preceding calendar year' for 'calendar year 1992' in subparagraph (B) thereof,

"(B) the medical consumer price index for such calendar year determined in the same manner as the adjustment described in subparagraph (A), or

"(C) 3 percent.

"(j) FLOOR STOCKS TAXES.—

"(1) IMPOSITION OF TAX.—On tobacco products and cigarette papers and tubes manufactured in or imported into the United States which are removed before any tax increase date, and held on such date for sale by any person, there is hereby imposed a tax in an amount equal to the excess of—

"(A) the tax which would be imposed under any preceding subsection of this section on the article if the article had been removed on such date, over

"(B) the prior tax (if any) imposed under such subsection on such article.

"(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—A person holding cigarettes on any tax increase date, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

"(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before April 1 following any tax increase date.

"(3) ARTICLES IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) and any other provision of law, any article which is located in a foreign trade zone on any tax increase date, shall be subject to the tax imposed by paragraph (1) if—

"(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act, or

"(B) such article is held on such date under the supervision of a customs officer pursuant to the 2d proviso of such section 3(a).

"(4) TAX INCREASE DATE.—The term "tax increase date" means January 1.

"(5) CONTROLLED GROUPS.—Rules similar to the rules of section 5061(e)(3) shall apply for purposes of this subsection.

"(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by the preceding subsections of this section shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such subsections. The Secretary may treat any person who bore the ultimate burden of the tax imposed by paragraph (1) as the person to whom a credit or refund under such provisions may be allowed or made."

(i) MODIFICATIONS OF CERTAIN TOBACCO TAX PROVISIONS.—

(1) EXEMPTION FOR EXPORTED TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES TO APPLY ONLY TO ARTICLES MARKED FOR EXPORT.—

(A) Subsection (b) of section 5704 of such Code is amended by adding at the end the following new sentence: "Tobacco products and cigarette papers and tubes may not be transferred or removed under this subsection unless such products or papers and tubes bear such marks, labels, or notices as the Secretary shall by regulations prescribe."

(B) Section 5761 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) SALE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES FOR EXPORT.—Except as provided in subsections (b) and (d) of section 5704—

"(1) every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under this chapter, "(2) every person who sells or receives such relanded tobacco products or cigarette papers or tubes, and

"(3) every person who aids or abets in such selling, relanding, or receiving,

shall, in addition to the tax and any other penalty provided in this title, be liable for a penalty equal to the greater of $1,000 or 5 times the amount of the tax imposed by this chapter. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States, and all vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States."

(C) Subsection (a) of section 5761 of such Code is amended by striking "subsection (b)" and inserting "subsection (b) or (c)".

(D) Subsection (d) of section 5761 of such Code, as redesignated by subparagraph (B), is amended by striking "The penalty imposed by subsection (b)" and inserting "The penalties imposed by subsections (b) and (c)".

(E)(i) Subpart F of chapter 52 of such Code is amended by adding at the end the following new section:

"SEC. 5754. RESTRICTION ON IMPORTATION OF PREVIOUSLY EXPORTED TOBACCO PRODUCTS.

"(a) IN GENERAL.—Tobacco products and cigarette papers and tubes previously exported from the United States may be imported or brought into the United States only as provided in section 5704(d). For purposes of this section, section 5704(d), section 5761, and such other provisions as the Secretary may specify by regulations, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

"(b) CROSS REFERENCE.—

"For penalty for the sale of tobacco products and cigarette papers and tubes in the United States which are labeled for export, see section 5761(c)."

(ii) The table of sections for subpart F of chapter 52 of such Code is amended by adding at the end the following new item:

"Sec. 5754. Restriction on importation of previously exported tobacco products."

(2) IMPORTERS REQUIRED TO BE QUALIFIED.—

(A) Sections 5712, 5713(a), 5721, 5722, 5762(a)(1), and 5763 (b) and (c) of such Code are each amended by inserting "or importer" after "manufacturer".

(B) The heading of subsection (b) of section 5763 of such Code is amended by inserting "QUALIFIED IMPORTERS," after "MANUFACTURERS,".

(C) The heading for subchapter B of chapter 52 of such Code is amended by inserting "**and Importers**" after "**Manufacturers**".

(D) The item relating to subchapter B in the table of subchapters for chapter 52 of such Code is amended by inserting "and importers" after "manufacturers".

(3) BOOKS OF 25 OR FEWER CIGARETTE PAPERS SUBJECT TO TAX.—Subsection (c) of section 5701 of such Code is amended by striking "On each book or set of cigarette papers containing more than 25 papers," and inserting "On cigarette papers,".

(4) STORAGE OF TOBACCO PRODUCTS.—Subsection (k) of section 5702 of such Code is amended by inserting "under section 5704" after "internal revenue bond".

(5) AUTHORITY TO PRESCRIBE MINIMUM MANUFACTURING ACTIVITY REQUIREMENTS.—Section 5712 of such Code is amended by striking "or" at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

"(2) the activity proposed to be carried out at such premises does not meet such minimum capacity or activity requirements as the Secretary may prescribe, or''.

(j) REPEAL OF DUPLICATIVE PROVISIONS.—Section 9302 (other than subsection (i)(2)) of the Balanced Budget Act of 1997 is repealed.

(k) EFFECTIVE DATE.—The amendments and repeal made by this section shall apply to articles removed (as defined in section 5702(k) of the Internal Revenue Code of 1986, as amended by this section) after December 31, 1997.

SEC. 102. TAX TREATMENT FOR CERTAIN TOBACCO-RELATED EXPENSES.

(a) IN GENERAL.—Section 275(a) of the Internal Revenue Code of 1986 (relating to certain taxes) is amended by inserting after paragraph (6) the following:

"(7) Taxes imposed by chapter 52, but only in an amount determined at rates in excess of the rates of such taxes effective in 1998."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1998.

TITLE II—PHAER TRUST FUND

SEC. 201. PUBLIC HEALTH AND EDUCATION RESOURCE TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end the following new section:

"SEC. 9512. PUBLIC HEALTH AND EDUCATION RESOURCE TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Public Health and Education Resource Trust Fund' (hereafter referred to in this section as the 'PHAER Trust Fund'), consisting of such amounts as may be appropriated or transferred to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There is hereby appropriated to the Trust Fund an amount equivalent to the net increase in revenues received in the Treasury attributable to the amendments made by section 2 of the Public Health and Education Resource (PHAER) Act as estimated by the Secretary.

"(c) OBLIGATIONS FROM TRUST FUND.—

"(1) STATE PROGRAMS.—

"(A) IN GENERAL.—An applicable percentage of 75 percent of the amounts available in the Trust Fund in a fiscal year shall be distributed by the Secretary of Health and Human Services to each State meeting the requirements of subparagraphs (C) and (D) to be used by such State and by local government entities within such State in such fiscal year and the succeeding fiscal year in the following manner:

"(i) Not less than 10 nor more than 30 percent of such amounts to State and local school and community-based tobacco education, prevention, and treatment programs.

"(ii) Not less than 10 nor more than 30 percent of such amounts to State and local smoking cessation programs and services, including pharmacological therapies.

"(iii) Not less than 10 nor more than 30 percent of such amounts to State and local counter advertising programs.

"(iv) Not less than 10 nor more than 25 percent of such amounts to the State Children's Health Insurance Program under title XXI of the Social Security Act

(42 U.S.C. 1397aa et seq.) to be in addition to the amount appropriated under section 2104 of such Act.

"(v) Not less than 5 nor more than 10 percent of such amounts to—

"(I) the Special Supplemental Food Program for Women, Infants, and Children under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) to be in addition to the amount appropriated under such section, or

"(II) the Maternal and Child Health Services Block Grant program under title V of the Social Security Act (42 U.S.C. 701 et seq.) to be in addition to the amount appropriated under such title, or

"(III) a combination of both programs as determined by the State.

"(vi) Not less than 1 nor more than 3 percent of such amounts to the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) program for such

State or other State or local community-based tobacco control programs.

"(vii) Not more than 5 percent of such amounts to a State general health care block grant program.

"(B) ALLOCATION RULES.—For purposes of subparagraph (A), the applicable percentage for any State is determined in accordance with the following table:

State	**Applicable Percentage**
Alabama	1.270390
Alaska	0.241356
Arizona	1.163883
Arkansas	0.751011
California	8.805641
Colorado	1.054018
Connecticut	1.596937
Delaware	0.227018
District of Columbia	0.534487
Florida	3.590667
Georgia	2.007112
Hawaii	0.642527
Idaho	0.257835
Illinois	4.272898
Indiana	1.714594
Iowa	0.758686
Kansas	0.762230
Kentucky	1.875439
Louisiana	1.916886
Maine	0.870740
Maryland	2.051849
Massachusetts	3.700447
Michigan	4.431824
Minnesota	2.474364
Mississippi	0.851450
Missouri	1.659116
Montana	0.335974
Nebraska	0.445356
Nevada	0.307294
New Hampshire	0.552048
New Jersey	3.494187
New Mexico	0.465816
New York	14.529380
North Carolina	2.097625

State	Applicable Percentage
North Dakota	0.250758
Ohio	4.690156
Oklahoma	0.841972
Oregon	1.092920
Pennsylvania	5.233270
Rhode Island	0.821727
South Carolina	0.883628
South Dakota	0.234849
Tennessee	2.479873
Texas	4.451382
Utah	0.330016
Vermont	0.370244
Virginia	1.373860
Washington	1.794612
West Virginia	1.003660
Wisconsin	2.098696
Wyoming	0.122405
American Samoa	0.008681
N. Mariana Islands	0.001519
Guam	0.006506
U.S. Virgin Islands	0.004804
Puerto Rico	0.193175.

"(C) STATE PLANS FOR CERTAIN ALLOCATIONS.—Each State, working in collaboration with local government entities, shall submit a plan to the Secretary of Health and Human Services for approval for an allocation under the programs described in subparagraph (A), specifying the percentage share for each program. Each State plan shall provide for an equitable allocation of funds to local government entities, specifically in relation to local government tobacco-related health care needs and anti-tobacco education, prevention, and control activities. If a State fails to provide any component of a State plan with respect to any program allocation or if the Secretary of Health and Human Services disapproves any such component, the Secretary may make the allocation for such program to 1 or more local government or private entities located in such State pursuant to plans submitted by such entities and approved by the Secretary.

"(D) PROHIBITION OF SUPPLANTATION OF STATE FUNDS.—Each State shall demonstrate to the satisfaction of the Secretary of Health and Human Services that an allocation to a State under a program described in subparagraph (A) in any fiscal year shall be used to supplement, not supplant, existing funding for such program.

"(2) FEDERAL PROGRAMS.—

"(A) IN GENERAL.—Twenty-five percent of the amounts available in the Trust Fund in a fiscal year shall be distributed in the following manner:

"(i) 10 percent of such amounts to the Office of the Commissioner of Food and Drug Administration to be allocated at the Commissioner's discretion to conduct tobacco control activities.

"(ii) 25 percent of such amounts to the Office of the Secretary of Agriculture to be allocated at the Secretary's discretion to protect the financial well-being of tobacco farmers, their families, and their communities.

"(iii) 20 percent of such amounts to be allocated at the discretion of the Secretary of Health and Human Services to—

"(I) the Office of the Director of the National Institutes of Health to be allocated at the Director's discretion to conduct disease research, and

"(II) the Office of the Director of the Centers for Disease Control and Prevention to be allocated at the Director's discretion to decrease smoking.

"(iv) 20 percent of such amounts to the Office of the Secretary of Health and Human Services to be allocated at the Secretary's discretion—

"(I) to conduct prevention programs resulting from the study under section 4108 of the Balanced Budget Act of 1997, and

"(II) to increase the Federal payment for the coverage of qualified medicare beneficiaries under section 1902(a)(10)(E)(i) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(i)) and specified low-income medicare beneficiaries under section 1902(a)(10)(E)(iii) of such Act (42 U.S.C. 1396a(a)(10)(E)(iii)).

"(v) 20 percent of such amounts to fund a national counter advertising program.

"(vi) 2 percent of such amounts to the Office of the Administrator of the Agency for International Development to be allocated at the Administrator's discretion to strengthen international efforts to control tobacco.

"(vii) 2 percent of such amounts to the Office of the Director of the Office of National Drug Control Policy to be allocated at the Director's discretion to conduct tobacco education and prevention programs.

"(viii) 1 percent of such amounts to the Office of the Secretary of Veterans Affairs to be allocated at the Secretary's discretion to conduct tobacco education, intervention, and outreach programs.

"(B) GRANTS AND CONTRACTS FULLY FUNDED IN FIRST YEAR.—With respect to any grant or contract funded by amounts distributed under paragraph (1), the full amount of the total obligation of such grant or contract shall be funded in the first year of such grant or contract, and shall remain available until expended."

(b) CONFORMING AMENDMENT.—The table of sections for such subchapter A is amended by adding at the end the following new item:

"Sec. 9512. Public Health and Education Resource Trust Fund."

TITLE III—FEDERAL STANDARDS WITH RESPECT TO TOBACCO PRODUCTS

SEC. 301. FEDERAL STANDARDS WITH RESPECT TO TOBACCO PRODUCTS.

(a) CIGARETTES.—Subsection (b) of section 5 of the Federal Cigarette Labeling And Advertising Act (15 U.S.C. 1334(b)) is repealed.

(b) SMOKELESS TOBACCO.—Subsection (b) of section 7 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4406(b)) is repealed.

TITLE IV—SENSE OF THE SENATE

SEC. 401. SENSE OF THE SENATE REGARDING COMPREHENSIVE TOBACCO LEGISLATION.

It is the sense of the Senate that any final comprehensive tobacco legislation funded by the PHAER Trust Fund under section 9512 of the Internal Revenue Code of 1986, as added by section 201 of this Act, must include, at the very least, the following additional elements:

(1) Stiff penalties that give the tobacco industry the strongest possible incentive to stop targeting children.

(2) Full authority for the Food and Drug Administration to regulate tobacco like any other drug or device with sufficient flexibility to meet changing circumstances.

(3) Codification of the Food and Drug Administration's initiative to prevent teen smoking and the imposition of stronger restrictions on youth access and advertising consistent with the United States Constitution.

(4) Broad disclosure of tobacco industry documents, including documents that have been hidden under false claims of the attorney-client privilege.

(5) Efforts to ensure that the tobacco industry stops marketing and promoting tobacco to children, including comprehensive corporate compliance programs.

(6) Elimination of secondhand tobacco smoke in public and private buildings in which 10 or more people regularly enter.

(7) Disclosure of the ingredients and constituents of all tobacco products to the public and the imposition of more prominent health warning labels on packaging to send a strong and clear message to children about the dangers of tobacco use.

(8) A prohibition on the use of Federal Government resources to weaken nondiscriminatory public health laws or promote tobacco sales abroad.