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Tobacco Bills-Conrad, Hatch, Jeffords: [S.1648, Jeffords] [Copy 1]

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AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide for a complete substitute.

IN THE SENATE OF THE UNITED STATES—105th Cong., 1st Sess.

S. 1648

To amend the Public Health Service Act and the Food, Drug and Cosmetic Act to provide for reductions in youth smoking, for advancements in tobacco-related research, and the development of safer tobacco products, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. JEFFORDS

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Preventing Addiction to Smoking among Teens Act” or
6 the “PAST Act”.

7 (b) **TABLE OF CONTENTS.**—The Table of contents
8 for this Act is as follows:

Sec. 1. Short title: table of contents.

Sec. 2. Findings.

Sec. 3. Goals and purposes.

Sec. 4. National goals for the reduction in underage tobacco use.

TITLE I—REGULATION OF TOBACCO PRODUCTS AND TOBACCO PRODUCT DEVELOPMENT

Sec. 101. Regulation of tobacco products and tobacco product development.

“CHAPTER IX—HEALTH AND SAFETY REGULATORY REQUIREMENTS RELATING TO TOBACCO PRODUCTS

“Sec. 900. Definitions.

“SUBCHAPTER A—TOBACCO PRODUCT REGULATION

“Sec. 901. Statement of general duties.

“Sec. 902. Submission of health information to the secretary.

“Sec. 903. Tobacco product health risk reduction standards.

“Sec. 904. Good manufacturing practice standards.

“Sec. 905. Tobacco product labeling, warning, and packaging standards.

“Sec. 906. Restriction on marketing and advertising.

“Sec. 907. Reduced risk tobacco products.

“Sec. 908. Tobacco Products Scientific Advisory Committee.

“Sec. 909. Reports.

“Sec. 910. Judicial review.

“Sec. 911. Authority to assess and use fees.

“Sec. 912. Preservation of State and local authority.

“Sec. 913. Authority to regulate tobacco products other than cigarettes
and smokeless tobacco.

“Sec. 914. Severability and statement of authority.

Sec. 102. Technical provisions.

Sec. 103. Federal licensing of military and other entities.

TITLE II—NATIONAL EFFORTS TO REDUCE YOUTH SMOKING

Sec. 201. Short title.

Sec. 202. Amendment to Public Health Service Act

“TITLE XXVIII—NATIONAL EFFORTS TO REDUCE YOUTH SMOKING

“Sec. 2801. Definitions.

“Subtitle A—Required Reduction in Underage Use of Tobacco Products

“Sec. 2811. Purpose.

“Sec. 2812. Determination of underage use baseline level.

“Sec. 2813. Annual monthly percentage prevalence of underage use of to-
bacco products.

“Sec. 2814. Required percentage reduction in underage use of tobacco
products.

“Sec. 2815. Application of surcharges.

“Sec. 2816. Abatement procedures.

“Sec. 2817. Incentive for exceeding reduction goals.

“Subtitle B—Restrictions on Access to Tobacco Products

“Sec. 2821. Minors' access to tobacco products.

“Sec. 2822. Compliance goals.

- "Sec. 2823. Model State law.
- "Sec. 2824. Funding.
- "Sec. 2825. Tobacco product marketing restrictions.
- "Sec. 2826. Penalties.
- "Sec. 2828. Regulations.

"Subtitle C—State and Community Action Program

- "Sec. 2831. Funding from Tobacco Settlement Trust Fund.
- "Sec. 2832. Allotments.
- "Sec. 2833. Payments under allotments to States.
- "Sec. 2834. Technical assistance and provision of supplies and services in lieu of funds.
- "Sec. 2835. Use of allotments.
- "Sec. 2836. Application for payments; State plan.
- "Sec. 2837. Reports, data, and audits.
- "Sec. 2838. Withholding.
- "Sec. 2839. Nondiscrimination.
- "Sec. 2840. Criminal penalty for false statements.

"Subtitle D—Smoking Cessation Programs

- "Sec. 2841. Funding from Tobacco Settlement Trust Fund.
- "Sec. 2842. Allotments.
- "Sec. 2843. Payments under allotments to States.
- "Sec. 2844. Technical assistance and provision of supplies and services in lieu of funds.
- "Sec. 2845. Use of allotments.
- "Sec. 2846. Application for payments; State plan.
- "Sec. 2847. Reports, data, and audits.
- "Sec. 2848. Withholding.
- "Sec. 2849. Nondiscrimination.
- "Sec. 2850. Criminal penalty for false statements.

"Subtitle E—Reducing Youth Smoking and Tobacco-Related Diseases
Through Research

- "Sec. 2851. Study by the Institute of Medicine.
- "Sec. 2852. National Tobacco Task Force.
- "Sec. 2853. Research activities of the Centers for Disease Control and Prevention.
- "Sec. 2854. Research activities of the National Institutes of Health.

"Subtitle F—Public Health Education and Promotion

- "Sec. 2861. Public health education and promotion.

TITLE III—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO
TOBACCO SMOKE

- Sec. 301. Standards to reduce involuntary exposure to tobacco smoke.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Severability.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Tobacco is an addictive substance the use of
4 which constitutes the Nation's number 1 preventable
5 cause of death.

6 (2) The use of tobacco products by the nation's
7 children is a serious and growing public health prob-
8 lem that results in new generations of tobacco-de-
9 pendent children and adults.

10 (3) There is a consensus within the scientific,
11 public health, and medical communities that cur-
12 rently marketed tobacco products are inherently un-
13 safe and cause cancer, heart disease, and other seri-
14 ous adverse health effects.

15 (4) Virtually all new users of tobacco products
16 are under the age of 18. Tobacco industry advertis-
17 ing and marketing is directed at adolescents and as
18 such, sweeping new restrictions on the sale, pro-
19 motion, and distribution of such products are need-
20 ed.

21 (5) The Office on Smoking and Health of the
22 Centers for Disease Control and Prevention has
23 found that more than 70 percent of the nation's
24 50,000,000 current smokers have tried unsucces-
25 sfully to quit, and about 20,000,000 try to quit each
26 year, with little success.

1 (6) Current research shows that new and cost-
2 effective treatments are available that could dramati-
3 cally improve the success rate of smoking cessation
4 attempts.

5 (7) While State laboratory models, such as
6 those developed in California and Massachusetts,
7 demonstrate that comprehensive programs to reduce
8 tobacco use can be effective, tobacco-related re-
9 search, including policy-oriented, programmatic, be-
10 havioral, public health, and biomedical research
11 should be a substantial component of a national pro-
12 gram to prevent and reduce the use of tobacco prod-
13 ucts.

14 (8) Enhancing the available prevention, re-
15 search, and treatment resources with respect to to-
16 bacco will allow our Nation to address more effec-
17 tively the problems associated with the use of to-
18 bacco products.

19 (9) States have been instrumental in reducing
20 smoking rates, and States should continue to play a
21 leading role in tobacco control efforts.

22 (10) While the Synar amendment has estab-
23 lished the importance of restricting access to tobacco
24 products as a way to reduce smoking among teens,
25 most teens who smoke buy cigarettes themselves.

1 Thus, greater emphasis must be placed on the en-
2 forcement of effective restrictions on access and the
3 elimination of marketing and advertising to children
4 and teens.

5 **SEC. 3. GOALS AND PURPOSES.**

6 (a) GOALS.—It is a goal of this Act to—

7 (1) decrease and prevent youth smoking and to-
8 bacco product use and reduce the marketing of to-
9 bacco products to young Americans;

10 (2) decrease and prevent tobacco use by all
11 Americans by encouraging public education and
12 smoking cessation programs and to decrease the ex-
13 posure of individuals to environmental (second-hand)
14 smoke;

15 (3) develop effective strategies to prevent the
16 underage use of tobacco products;

17 (4) advance our knowledge of the health effects
18 of nicotine and tobacco products on the human body,
19 the factors that influence behavior related to the use
20 and nonuse of tobacco products, and the factors that
21 influence successful cessation efforts;

22 (5) establish the authority of the Food and
23 Drug Administration with respect to the types of to-
24 bacco products that may be lawfully sold; and

1 (6) invest tobacco revenues in important public
2 health priorities, such as smoking cessation, public
3 health education and health promotion, counter-ad-
4 vertising.

5 (b) PURPOSES.—It is the purpose of this Act to—

6 (1) provide for the funding by the tobacco in-
7 dustry of an aggressive enforcement program relat-
8 ing to tobacco advertising and distribution, including
9 a State-administered retail licensing system to pre-
10 vent minors from obtaining tobacco products;

11 (2) subject the tobacco industry to severe finan-
12 cial penalties in the event that underage tobacco
13 usage does not decline radically over the next 10
14 years;

15 (3) provide annual payments to the States to
16 fund comprehensive tobacco education and use pre-
17 vention programs at the State and community levels;

18 (4) provide annual payments to States to fund
19 effective smoking cessation treatment efforts at the
20 State and community levels;

21 (5) provide for the establishment of national
22 standards to control the manufacturing of tobacco
23 products and the ingredients used in such products;

24 (6) provide certain regulatory powers to the
25 Secretary of Health and Human Services to encour-

1 age the development and marketing by the tobacco
2 industry of "less hazardous tobacco products", in-
3 cluding the power to regulate the level of nicotine in
4 such products;

5 (7) provide for the establishment of a national
6 education-oriented counter advertising and tobacco
7 use prevention campaign to be funded through the
8 National Tobacco Settlement Trust Fund;

9 (8) establish a minimum Federal standard to
10 limit smoking in public places, including the halls of
11 Congress; and

12 (9) provide authority for the Food and Drug
13 Administration to regulate tobacco products other
14 than cigarettes and smokeless tobacco if scientific
15 and medical data support such regulation in the fu-
16 ture.

17 **SEC. 4. NATIONAL GOALS FOR THE REDUCTION IN UNDER-**
18 **AGE TOBACCO USE.**

19 (a) **IN GENERAL.**—With respect to the average an-
20 nual incidence of the monthly use of tobacco products by
21 individuals who are under 18 years of age, it shall be the
22 national goals of the United States that such use be re-
23 duced as follows:

24 (1) **CIGARETTES.**—With respect to cigarettes—

1 (A) in the fifth and sixth calendar years
2 after the date of enactment of this Act the per-
3 centage decrease in the use of cigarette shall be
4 at least 30 percent;

5 (B) in the seventh, eighth and ninth cal-
6 endar years after the date of enactment of this
7 Act the percentage decrease in the use of ciga-
8 rette shall be at least 50 percent; and

9 (C) in the tenth and subsequent calendar
10 years after the date of enactment of this Act
11 the percentage decrease in the use of cigarette
12 shall be at least 60 percent.

13 (2) SMOKELESS TOBACCO.—With respect to
14 smokeless tobacco—

15 (A) in the fifth and sixth calendar years
16 after the date of enactment of this Act the per-
17 centage decrease in the use of smokeless to-
18 bacco shall be at least 25 percent;

19 (B) in the seventh, eighth and ninth cal-
20 endar years after the date of enactment of this
21 Act the percentage decrease in the use of
22 smokeless tobacco shall be at least 35 percent;
23 and

24 (C) in the tenth and subsequent calendar
25 years after the date of enactment of this Act

1 the percentage decrease in the use of smokeless
2 tobacco shall be at least 45 percent.

3 (b) DETERMINATIONS.—Determinations as to wheth-
4 er the national goals described in subsection (a) have been
5 met shall be made in accordance with the provisions of
6 subtitle A of title XXVIII of the Public Health Service
7 Act (as added by section 202).

8 **TITLE I—REGULATION OF TO-**
9 **BACCO PRODUCTS AND TO-**
10 **BACCO PRODUCT DEVELOP-**
11 **MENT**

12 **SEC. 101. REGULATION OF TOBACCO PRODUCTS AND TO-**
13 **BACCO PRODUCT DEVELOPMENT.**

14 (a) PROHIBITED ACTS.—Section 301 of the Federal
15 Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amend-
16 ed by adding at the end the following:

17 “(aa) The introduction or delivery for introduction
18 into interstate commerce of any tobacco product that does
19 not comply with the provisions of chapter IX.

20 “(bb) The failure by the manufacturer of a tobacco
21 product to comply with a tobacco product health risk man-
22 agement standard, a good manufacturing practice stand-
23 ard, a tobacco product labeling, warning or packaging
24 standard, or any other requirement of chapter IX.”.

1 (b) INSPECTIONS.—Section 704(a)(1) of the Federal
2 Food, Drug, and Cosmetic Act (21 U.S.C. 374(a)(1)) is
3 amended—

4 (1) in subparagraph (A), by striking “or cos-
5 metics” each place that such appears and inserting
6 “, cosmetics, or tobacco products”; and

7 (2) in the second sentence, by striking “drugs
8 or” each place that such appears and inserting
9 “drugs, tobacco products or”.

10 (c) REGULATION OF TOBACCO PRODUCTS.—The
11 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301
12 et seq.) is amended—

13 (1) by redesignating chapter IX as chapter X;

14 (2) by redesignating sections 901, 902, 903,
15 904, and 905 as sections 1001, 1002, 1003, 1004,
16 and 1005, respectively; and

17 (3) by adding after chapter VIII the following
18 new chapter:

19 “CHAPTER IX—HEALTH AND SAFETY REGU-
20 LATORY REQUIREMENTS RELATING TO TO-
21 BACCO PRODUCTS

22 “SEC. 900. DEFINITIONS.

23 “In this chapter:

24 “(1) CIGARETTE.—The term ‘cigarette’ means
25 any product which contains nicotine, is intended to

1 be burned or heated under ordinary conditions of
2 use, and consists of—

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

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

11 “(2) CIGARETTE TOBACCO.—The term ‘ciga-
12 rette tobacco’ means any product that consists of
13 loose tobacco that contains or delivers nicotine and
14 is intended for use by persons in a cigarette. Unless
15 otherwise stated, the requirements of this title per-
16 taining to cigarettes shall also apply to cigarette to-
17 bacco.

18 “(3) NICOTINE.—The term ‘nicotine’ means the
19 chemical substance named 3-(1-Methyl-2-
20 pyrrolidiny)pyridine or $C_{10}H_{14}N_2$, including any salt
21 or complex of nicotine.

22 “(4) SMOKELESS TOBACCO.—The term ‘smoke-
23 less tobacco’ means any product that consists of cut,
24 ground, powdered, or leaf tobacco that contains nico-

1 tine and that is intended to be placed in the oral or
2 nasal cavity.

3 “(5) TAR.—The term ‘tar’ means mainstream
4 total particulate matter minus nicotine and water.

5 “(6) TOBACCO ADDITIVE.—The term ‘tobacco
6 additive’ means any substance the intended use of
7 which results or may reasonably be expected to re-
8 sult, directly or indirectly, in the substance becoming
9 a component of, or otherwise affecting the character-
10 istics of, any tobacco product, including any sub-
11 stance that may have been removed from the tobacco
12 product and then readded in the substance’s original
13 or modified form.

14 “(7) TOBACCO PRODUCT.—

15 “(A) IN GENERAL.—The term ‘tobacco
16 product’ means cigarettes and smokeless to-
17 bacco.

18 “(B) LIMITATION.—Tobacco leaf that is
19 not in the possession of a tobacco product man-
20 ufacturer shall not be considered to be a to-
21 bacco product within the meaning of subpara-
22 graph (A). The provisions of this chapter shall
23 not apply to tobacco leaf that is not in the pos-
24 session of the manufacturer, or to the produc-
25 ers of tobacco leaf, including tobacco growers

1 and tobacco grower cooperatives. Notwithstand-
2 ing any other provision of this subparagraph, if
3 a producer of tobacco leaf is also a tobacco
4 plant manufacturer, such producer shall be sub-
5 ject to this chapter in the producers' capacity
6 as a manufacturer. The Secretary shall consult
7 with the Secretary of Agriculture or the Admin-
8 istrator of the Environmental Protection Agen-
9 cy with respect to any matter that involves to-
10 bacco leaf or a producer thereof.

11 “(8) TOBACCO PRODUCTS OTHER THAN CIGA-
12 RETTES AND SMOKELESS TOBACCO.—The term ‘to-
13 bacco products other than cigarettes and smokeless
14 tobacco’ means tobacco products other than ciga-
15 rettes and smokeless tobacco as defined in this chap-
16 ter.

17 **“Subchapter A—Tobacco Product Regulation**

18 **“SEC. 901. STATEMENT OF GENERAL DUTIES.**

19 “(a) IN GENERAL.—As part of the comprehensive
20 health promotion and disease prevention program estab-
21 lished under this chapter and the PAST Act (and the
22 amendments made by such Act) relating to diseases and
23 conditions associated with the use of tobacco products,
24 and that places a special emphasis on discouraging the

1 use of such products by young Americans, the Secretary
2 shall—

3 “(1) receive, assess, and provide appropriate
4 confidentiality regarding information submitted to
5 the Secretary under section 902;

6 “(2) develop and implement health risk reduc-
7 tion standards for tobacco products under section
8 903;

9 “(3) develop and enforce good manufacturing
10 practice standards for tobacco products under sec-
11 tion 904;

12 “(4) enforce, and as appropriate, revise tobacco
13 product labeling, warning, and packaging standards
14 under section 905;

15 “(5) enforce tobacco product restriction on
16 marketing and advertising under section 906;

17 “(6) develop and implement standards that en-
18 courage the development and use of reduced risk to-
19 bacco products under section 907 and designate as
20 ‘Reduced Risk Tobacco Products’ those products
21 that meet the standards under such section;

22 “(7) establish and oversee a tobacco products
23 scientific advisory committee under section 908 to
24 provide advice on the establishment of health risk re-
25 duction standards, good manufacturing practice reg-

1 ulations, tobacco product labeling, warning and
2 packaging standards, and standards for the review
3 of reduced risk tobacco products under sections 903,
4 904, 905, and 907;

5 “(8) submit reports to Congress evaluating the
6 effectiveness of this chapter and the PAST Act as
7 described in section 909;

8 “(9) assess and collect fees under section 911;
9 and

10 “(10) develop, implement, and enforce require-
11 ments for tobacco products other than cigarettes and
12 smokeless tobacco as provided under Section 913.

13 “(b) **AUTHORITY OF SECRETARY.**—The Secretary
14 shall regulate tobacco products and tobacco products other
15 than cigarettes and smokeless tobacco exclusively under
16 the authority provided for in this chapter and shall not
17 regulate such products under chapter V.

18 **“SEC. 902. SUBMISSION OF HEALTH INFORMATION TO THE**
19 **SECRETARY.**

20 “(a) **REQUIREMENT.**—Not later than 6 months after
21 the date of enactment of this chapter, each manufacturer
22 or importer of tobacco products, or agents thereof, shall
23 submit to the Secretary the following information:

24 “(1) A listing of all tobacco ingredients, sub-
25 stances and compounds (other than tobacco, water

1 or reconstituted tobacco sheet made wholly from to-
2 bacco) that are, on such date, added by the manu-
3 facturer to the tobacco, paper, filter or other compo-
4 nent of each tobacco product by brand and by quan-
5 tity in each brand and subbrand.

6 “(2) A description of the nicotine content of
7 each tobacco product measured in milligrams of nic-
8 otine.

9 “(3) All documents (including underlying sci-
10 entific information) relating to research activities,
11 and research findings, conducted, supported, or
12 processed by the manufacturer (or agents thereof)
13 on the health or physiologic effects of tobacco prod-
14 ucts, their constituents, ingredients, and compo-
15 nents, and tobacco additives, described in paragraph
16 (1).

17 “(4) All documents (including underlying sci-
18 entific information), whether or not subject to notifi-
19 cation under section 907(e), relating to research ac-
20 tivities, and research findings, conducted, supported,
21 or possessed by the manufacturer that relate to the
22 issue of whether a reduction in risk to health from
23 tobacco products can occur upon the employment of
24 technology available or known to the manufacturer.

1 “(5) All documents (including underlying sci-
2 entific information) relating to marketing research
3 involving the use of tobacco products.

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

7 “(b) ANNUAL SUBMISSION.—A manufacturer or im-
8 porter that is required to submit information under sub-
9 section (a) shall update such information on an annual
10 basis pursuant to a schedule determined by the Secretary.

11 “(c) TIME FOR SUBMISSION.—

12 “(1) NEW PRODUCTS.—At least 90 days prior
13 to the delivery for introduction into interstate com-
14 merce of a tobacco product not on the market on the
15 date of enactment of this chapter, the manufacturer
16 of such product shall provide the information re-
17 quired under subsection (a) and such product shall
18 be subject to the annual submission under sub-
19 section (b).

20 “(2) MODIFICATION OF EXISTING PRODUCTS.—

21 If at any time a manufacturer adds to its tobacco
22 products a new tobacco additive, increases or de-
23 creases the quantity of an existing tobacco additive
24 or the nicotine level, or eliminates a tobacco additive
25 from any tobacco product, the manufacturer shall

1 within 60 days of such action so advise the Sec-
2 retary in writing and reference such modification in
3 submissions made under subsection (b).

4 “(d) CONFIDENTIALITY.—

5 “(1) GENERAL RULE.—Any information that is
6 not required to be disclosed to the public under this
7 section, shall be exempt from disclosure pursuant to
8 subsection (a) of section 552 of title 5, United
9 States Code, by reason of subsection (b)(4) of such
10 section, and shall be considered confidential and
11 shall not be disclosed, except that such information
12 may be disclosed to other officers or employees as
13 provided for in paragraph (4) or when relevant in
14 any proceeding under this chapter.

15 “(2) PETITION BY MANUFACTURER.—Upon the
16 submission of the information required under sub-
17 section (a), or the submission of any other informa-
18 tion under any other provisions of this chapter, a
19 manufacturer may petition the Secretary to exempt
20 certain ingredients, substances, or compounds or
21 other information submitted from public disclosure
22 under this subsection on the basis that such infor-
23 mation should be considered confidential as a trade
24 secret. Such petition may be accompanied by such
25 data as the manufacturer elects to submit.

1 “(3) DETERMINATION.—Not later than 90 days
2 after receiving a petition under paragraph (2), the
3 Secretary shall make a determination with respect to
4 whether the information described in the petition
5 should be exempt from disclosure under paragraph
6 (1) as a trade secret. The Secretary shall provide the
7 manufacturer involved with notice of such deter-
8 mination, but the decision of the Secretary shall be
9 final.

10 “(4) PROCEDURES FOR CONFIDENTIAL INFOR-
11 MATION.—The Secretary shall develop procedures to
12 maintain the confidentiality of information that is
13 treated as a trade secret under a determination
14 under paragraph (3). Such procedures shall in-
15 clude—

16 “(A) a requirement that such information
17 be maintained in a secure facility; and

18 “(B) a requirement that only the Sec-
19 retary, or the authorized agents of the Sec-
20 retary, will have access to the information and
21 shall be instructed to maintain the confidential-
22 ity of such information.

23 “(5) HEALTH DISCLOSURE.—Notwithstanding
24 any other provision of this subsection, the Secretary
25 may require that any document under subsection (a)

1 that is determined to be exempt from disclosure be
2 disclosed if the Secretary determines that it is in the
3 interest of public health to disclose such document.

4 **"SEC. 903. TOBACCO PRODUCT HEALTH RISK REDUCTION**
5 **STANDARDS.**

6 “(a) AUTHORITY.—

7 “(1) IN GENERAL.—The Secretary shall by reg-
8 ulation (promulgated under the authority of section
9 701(a) and consistent with the procedures described
10 in section 553 of title 5, United States Code) estab-
11 lish tobacco product health risk reduction standards.

12 “(2) CONSULTATION.—In developing and pro-
13 mulgating regulations under this chapter, the Sec-
14 retary shall consult (as the Secretary determines ap-
15 propriate) with—

16 “(A) Federal public health and safety offi-
17 cials; and

18 “(B) other public health and safety ex-
19 perts, including State and local public health
20 and safety officials, and other interested mem-
21 bers of the public and affected parties.

22 “(b) PROCEDURES FOR THE ESTABLISHMENT OF
23 STANDARDS.—

24 “(1) PUBLICATION OF NOTICE.—

1 “(A) IN GENERAL.—The Secretary shall
2 publish in the Federal Register a notice of pro-
3 posed rulemaking for the establishment, amend-
4 ment, or revocation of any health risk reduction
5 standard for a tobacco product under this sec-
6 tion.

7 “(B) CONTENTS OF NOTICE.—A notice of
8 proposed rulemaking for the establishment or
9 amendment of a health risk reduction standard
10 for a tobacco product shall be accompanied by
11 a justification of the proposed action and
12 shall—

13 “(i) invite interested persons to sub-
14 mit to the Secretary, within 30 days of the
15 publication of the notice, requests for
16 changes in the standard based on new in-
17 formation relevant to the standard; and

18 “(ii) invite interested persons to sub-
19 mit an existing health risk reduction
20 standard for the tobacco product, including
21 a draft or proposed health risk reduction
22 standard, for consideration by the Sec-
23 retary.

24 “(C) NOTICE OF REVOCATION.—A notice
25 of proposed rulemaking for the revocation of a

1 health risk reduction standard shall set forth a
2 finding with supporting justification that the
3 health risk reduction standard is no longer nec-
4 essary with respect to the tobacco product.

5 “(D) COMMENTS.—The Secretary shall
6 provide for a comment period, other than for
7 requests made under subparagraph (B)(i), of
8 not less than 60 days after the date on which
9 a notice has been published under this para-
10 graph.

11 “(2) REQUEST FOR CHANGE.—If, after the
12 publication of a notice in accordance with paragraph
13 (1), the Secretary receives a request for a change in
14 the health risk reduction standard for a tobacco
15 product, the Secretary shall, within 60 days of the
16 publication of the notice, either deny the request and
17 provide a written response explaining the reasons for
18 the denial, or give notice of an intent to initiate such
19 a change.

20 “(3) REGULATION FOR ESTABLISHMENT.—

21 “(A) IN GENERAL.—After the expiration of
22 the period for comment on a notice of proposed
23 rulemaking published under paragraph (1) with
24 respect to a health risk reduction standard, and
25 after consideration of such comments and any

1 report from the tobacco products advisory com-
2 mittee under section 908, the Secretary shall—

3 “(i) promulgate a regulation establish-
4 ing a health risk reduction standard and
5 publish in the Federal Register findings
6 and considerations on the matters referred
7 to in subsection (c); or

8 “(ii) publish a notice terminating the
9 proceeding for the development of the
10 standard together with the reasons for
11 such termination.

12 “(B) CONTENTS.—A regulation establish-
13 ing a health risk reduction standard under sub-
14 paragraph (A) shall set forth the date or dates
15 upon which the standard shall take effect, but
16 no such regulation may take effect before the
17 expiration of the 1-year period beginning on the
18 date of its publication and such date or dates
19 shall be established so as to minimize economic
20 loss to, and disruption or dislocation of, domes-
21 tic and international trade, unless the Secretary
22 determines that an earlier effective date is nec-
23 essary for the protection of the public health.

24 “(4) AMENDING OR REVOKING OF STAND-
25 ARDS.—

1 “(A) IN GENERAL.—The Secretary, upon
2 the initiative of the Secretary or upon petition
3 of an interested person, may by regulation, pro-
4 mulgated in accordance with the requirements
5 of paragraphs (1), (2), and (3), amend or re-
6 voke a health risk reduction standard for a to-
7 bacco product.

8 “(B) EFFECTIVENESS OF AMENDMENT.—
9 The Secretary may declare a proposed amend-
10 ment of a health risk reduction standard under
11 this section to be effective on and after its pub-
12 lication in the Federal Register and until the
13 effective date of any final action taken on such
14 amendment if the Secretary determines that
15 making it so effective is in the public interest.
16 A proposed amendment of a health risk reduc-
17 tion standard made so effective under the pre-
18 ceding sentence may not prohibit, during the
19 period in which it is so effective, the introduc-
20 tion or delivery for introduction into interstate
21 commerce of a tobacco product which conforms
22 to such standard without the change or changes
23 provided by such proposed amendment.

24 “(c) REGULATION OF THE COMPOSITION OF TO-
25 BACCO PRODUCTS.—

1 “(1) IN GENERAL.—The Secretary may adopt a
2 health risk reduction standard under this section
3 that requires—

4 “(A) the modification of a tobacco product
5 in a manner that involves—

6 “(i) the gradual modification of nico-
7 tine yields of the product;

8 “(ii) the reduction or elimination of
9 other harmful constituents, ingredients (in-
10 cluding tobacco additives), substances,
11 compounds and properties of the product
12 in accordance with subsection (d)(4)(B),
13 including the establishment of levels of nic-
14 otine and other components, ingredients
15 (including tobacco additives), and constitu-
16 ents of the product, or smoke emitted by
17 such products; or

18 “(iii) other changes to reduce the like-
19 lihood of cigarette induced fires;

20 “(B) effective not earlier than the expira-
21 tion of the 10-year period beginning on the date
22 of enactment of this chapter, the reduction of
23 nicotine yields of a tobacco product to zero; or

24 “(C) effective not earlier than the expira-
25 tion of the 10-year period beginning on the date

1 of enactment of this chapter, the prohibition of
2 cigarettes or smokeless tobacco.

3 “(2) CONSIDERATIONS.—Tobacco product
4 health risk reduction standards established under
5 this section shall—

6 “(A) have as their objective reducing the
7 overall health risks to the public, including the
8 reduction in risk to the consumers of such prod-
9 ucts, to individuals who reduce or cease the use
10 of such products, and to individuals who do not
11 initiate the use of such products;

12 “(B) where necessary to meet the objec-
13 tives in subparagraph (A), include require-
14 ments—

15 “(i) with respect to the construction,
16 components, constituents, ingredients (in-
17 cluding tobacco additives), and properties
18 of the product, including the establishment
19 of levels of nicotine and other components,
20 ingredients (including tobacco additives),
21 and constituents of the product, or smoke
22 emitted by such products taking into ac-
23 count the technological and commercial
24 feasibility of such requirements;

1 “(ii) specifying the procedures for the
2 testing of such products, including devising
3 procedures to be used by tobacco product
4 manufacturers, the Secretary, or other ap-
5 propriate entities, to measure relevant
6 health-related characteristics of such prod-
7 ucts;

8 “(iii) for the testing of such products,
9 including devising procedures to be used by
10 manufacturers, the Secretary, or other ap-
11 propriate entities to measure the relevant
12 health related characteristics of such prod-
13 ucts to assess the conformity of such prod-
14 ucts with the applicable health risk reduc-
15 tion standards; and

16 “(iv) to limit the sale and distribution
17 of tobacco products to the extent author-
18 ized by this chapter;

19 “(C) as required under section 905, pre-
20 scribe certain conditions pertaining to the label-
21 ing and advertising of tobacco products; and

22 “(D) comply with regulations promulgated
23 by the Secretary that specify the health risk as-
24 sessment procedures for the testing of tobacco
25 and nontobacco constituents contained in to-

1 bacco products and determinations concerning
2 such products under subsection (d).

3 “(3) PROCEDURE FOR GENERAL PROHIBITION
4 OF TOBACCO PRODUCTS AND ELIMINATION OF NICO-
5 TINE.—

6 “(A) NONDELEGATION.—The Secretary
7 may not delegate the authority provided under
8 this section to promulgate a regulation that re-
9 sults in a general prohibition of cigarettes or
10 smokeless tobacco or the reduction of nicotine
11 yields of a tobacco product to zero.

12 “(B) CONGRESSIONAL REVIEW.—In ac-
13 cordance with section 801 of title 5, United
14 States Code, Congress shall review, and may
15 disapprove, any rule of the Secretary establish-
16 ing, amending, or revoking a tobacco product
17 health risk reduction standard, except that with
18 respect to a standard that results in a general
19 prohibition of cigarettes or smokeless tobacco or
20 the reduction of nicotine yields of a tobacco
21 product to zero, such standard shall only take
22 effect following the date of enactment of a joint
23 resolution of approval of such standard. The
24 provisions of section 802 of title 5, United
25 States Code, relating to certain disapproval res-

1 olutions shall apply to the consideration of any
2 joint resolution of approval under this sub-
3 section.

4 “(d) TOBACCO PRODUCTS RISK ASSESSMENT
5 STANDARDS.—

6 “(1) TOBACCO INGREDIENTS, COMPOUNDS, AD-
7 DITIVES, AND CONSTITUENTS.—The health risk re-
8 duction standards promulgated under subsection
9 (c)(2)(D) with respect to the testing of tobacco prod-
10 ucts shall include provisions relating to the assess-
11 ment of the health risks posed by the components of
12 tobacco, including but not limited to nicotine and
13 tar, and by tobacco use including carbon-monoxide.

14 “(2) NONTOBACCO INGREDIENTS, COMPOUNDS,
15 ADDITIVES, AND CONSTITUENTS.—

16 “(A) IN GENERAL.—The health risk reduc-
17 tion regulations under subsection (c)(2)(D) with
18 respect to the testing of nontobacco ingredients
19 used in tobacco products—

20 “(i) during the 5-year period begin-
21 ning on the date of enactment of this chap-
22 ter, shall apply to new ingredients (those
23 ingredients that were not previously used
24 in such products on such date of enact-
25 ment) used in such products and to ingre-

1 dients in use prior to such date of enact-
2 ment as the Secretary may require; and

3 “(ii) after the expiration of the 5-year
4 period described in clause (i), shall apply
5 to all ingredients used in such products.

6 “(B) IMPLEMENTATION.—In carrying out
7 this section, all requirements with respect to
8 nontobacco ingredients, substances, and com-
9 pounds shall be implemented in accordance with
10 subparagraph (A).

11 “(3) HEALTH RISK ASSESSMENTS.—

12 “(A) REQUIREMENT.—In compliance with
13 paragraphs (1) and (2), and in no case later
14 than 5 years after the date of enactment of this
15 chapter, and annually thereafter, each manufac-
16 turer shall submit to the Secretary a health risk
17 assessment for each ingredient, substance, or
18 compound that is listed under section 902(a)(1)
19 with respect to each brand and subbrand of to-
20 bacco product manufactured by each such man-
21 ufacturer.

22 “(B) AVAILABILITY OF NEW INFORMA-
23 TION.—The Secretary may include in the regu-
24 lations promulgated under this section, provi-
25 sions that permit or, as appropriate, require

1 manufacturers to, in subsequent years, prompt-
2 ly revise information that was submitted under
3 subparagraph (A) in previous years if new data
4 becomes available to that manufacturer. Such
5 regulations may require that a manufacturer
6 submit a notification to the Secretary where the
7 manufacturer determines that no new data has
8 become available during the previous year.

9 “(C) JOINT SUBMISSION.—At the discre-
10 tion of the Secretary, the health risk assess-
11 ments under this paragraph may be conducted
12 by a qualified third party organization on be-
13 half of more than 1 manufacturer for 1 or more
14 product, ingredient, substance or compound if a
15 joint submission is consistent with the public
16 health. Such joint submissions shall be subject
17 to the brand specific requirements of subpara-
18 graph (A).

19 “(D) BASIS OF ASSESSMENT.—The health
20 risk assessment of an ingredient, substance, or
21 compound described in subparagraph (A)
22 shall—

23 “(i) be based on the best scientific evi-
24 dence available at the time of the submis-
25 sion of the assessment; and

1 “(ii) ascertain whether there is a rea-
2 sonable certainty in the minds of com-
3 petent scientists that the ingredient, sub-
4 stance, or compound is not harmful in the
5 quantities used under the intended condi-
6 tions of use.

7 “(4) REGULATORY ACTION.—

8 “(A) ABSENCE OF A RISK ASSESSMENT.—
9 Not later than 12 months after the date of en-
10 actment of this chapter and subject to the re-
11 quirements of paragraphs (1), (2) and (3)(A),
12 the Secretary shall promulgate regulations to
13 prohibit the use of any ingredient, substance, or
14 compound in the tobacco product of a manufac-
15 turer if no health risk assessment has been sub-
16 mitted as required under this subsection by the
17 manufacturer for the ingredient, substance, or
18 compound.

19 “(B) REVIEW OF HEALTH RISK ASSESS-
20 MENTS.—

21 “(i) APPROVAL, CONDITIONAL AP-
22 PROVAL, OR DISAPPROVAL.—The Secretary
23 shall approve or disapprove of, or condi-
24 tion, the use of the ingredient, substance,
25 or compound that was the subject of the

1 assessment under this subsection within
2 180 days of the date on which the health
3 risk assessment is received and provide no-
4 tice of such approval, conditional approval,
5 or disapproval to the manufacturer. The
6 manufacturer may continue to use ingredi-
7 ents, substances, or compounds that are
8 the subject of such an assessment until the
9 Secretary disapproves or conditions such
10 ingredient, substance, or compound. The
11 Secretary shall establish a procedure to
12 allow manufacturers adequate time to com-
13 ply with any such condition or disapproval.

14 “(ii) NEW INGREDIENTS, SUB-
15 STANCES, COMPOUNDS, AND ADDITIVES.—
16 Notwithstanding clause (i), a new ingredi-
17 ent, substance, compound, or additive shall
18 not be introduced into commerce during
19 the 30-day period beginning on the date on
20 which a health risk assessment has been
21 submitted to the Secretary for such new
22 ingredient, substance, compound, or addi-
23 tive. The Secretary may by order prohibit
24 the use of such new ingredient, substance,
25 compound, or additive until the Secretary

1 completes a review of the assessment in-
2 volved.

3 “(iii) GENERAL APPLICABILITY.—At
4 the discretion of the Secretary, the ap-
5 proval, conditional approval, or disapproval
6 of a particular ingredient, substance, or
7 compound under clause (i) may by regula-
8 tion be made generally applicable to to-
9 bacco product manufacturers or a sub-
10 group of such manufacturers. In the case
11 of a conditional approval, the Secretary
12 shall develop a procedure to enable manu-
13 facturers to certify that the condition will
14 be complied with.

15 “(iv) INACTION BY SECRETARY.—If
16 the Secretary fails to act with respect to
17 an assessment during the period referred
18 to in clause (i), the manufacturer submit-
19 ting the assessment may continue to use
20 the ingredient, substance, or compound in-
21 volved until such time as the Secretary
22 makes a final decision, or the succeeding
23 annual risk assessment is submitted by the
24 manufacturer and the ingredient, sub-
25 stance, or compound is subsequently dis-

1 approved or conditioned. The Secretary
2 shall establish a procedure to allow manu-
3 facturers adequate time to comply with
4 any such condition or disapproval.

5 “(e) COMPLIANCE.—

6 “(1) IN GENERAL.—Health risk reduction
7 standards under this section shall apply to all to-
8 bacco products to which such standards are relevant.

9 “(2) LIMITATION.—During the period in which
10 a regulation promulgated under this section estab-
11 lishing a health risk reduction standard is in effect,
12 a tobacco product shall not be considered to be in
13 violation of section 301 if such product is in compli-
14 ance with such regulation, and the requirements of
15 sections 904 and 905.

16 “(f) EVALUATION.—The Secretary shall periodically
17 evaluate tobacco product health risk reduction standards
18 to determine whether such standards should be amended
19 to reflect new medical, scientific, or technological informa-
20 tion.

21 **“SEC. 904. GOOD MANUFACTURING PRACTICE STANDARDS.**

22 “(a) AUTHORITY.—

23 “(1) IN GENERAL.—The Secretary shall, in ac-
24 cordance with subsections (a) and (b) of section 903,
25 prescribe regulations requiring that the methods

1 used in, and the facilities and controls used for, the
2 manufacture, packing, and storage of a tobacco
3 product conform to current good manufacturing
4 practice, as prescribed in such regulations, to ensure
5 that such products will be in compliance with this
6 chapter.

7 “(2) REGISTRATION.—The regulations promul-
8 gated under paragraph (1) shall require that all to-
9 bacco product manufacturers register with the Sec-
10 retary.

11 “(3) SPECIAL CONSULTATION PROCEDURES.—
12 In developing and promulgating any regulation
13 under paragraph (1) the Secretary shall afford the
14 Tobacco Products Scientific Advisory Committee es-
15 tablished under section 908 an opportunity (with a
16 reasonable time period) to submit recommendations
17 in response to the notice of proposed rulemaking.

18 “(4) LIMITATION.—Good manufacturing prac-
19 tice regulations described in paragraph (1) shall be
20 appropriate for the manufacture of a product de-
21 rived from a raw agricultural commodity for which
22 no therapeutic claim is made.

23 “(b) PESTICIDE RESIDUES.—The regulations pro-
24 mulgated under subsection (a) shall at a minimum re-
25 quire, after consultation with the Administrator of the En-

1 vironmental Protection Agency, the development and ad-
2 herence to applicable tolerances with respect to pesticide
3 chemical residues in finished tobacco products, except that
4 such tolerances shall only apply if the Administrator deter-
5 mines that such tolerances are necessary to prevent such
6 residues from being injurious to health when used in to-
7 bacco products.

8 “(c) PETITIONS FOR EXEMPTIONS AND
9 VARLANCES.—

10 “(1) IN GENERAL.—Any person subject to any
11 requirement prescribed by regulations under sub-
12 section (a) may petition the Secretary for an exemp-
13 tion or variance from such requirement. Such a peti-
14 tion shall be submitted to the Secretary in such form
15 and manner as the Secretary shall by regulation pre-
16 scribe and shall—

17 “(A) in the case of a petition for an ex-
18 emption from a requirement, set forth the basis
19 for the petitioner’s determination that compli-
20 ance with the requirement is not required to en-
21 sure that the tobacco product is in compliance
22 with section 903;

23 “(B) in the case of a petition for a vari-
24 ance from a requirement, set forth the methods
25 proposed to be used in, and the facilities and

1 controls proposed to be used for, the manufac-
2 ture, packing, and storage of the product in lieu
3 of the methods, facilities, and controls pre-
4 scribed by the requirement; and

5 “(C) contain such other information as the
6 Secretary shall prescribe.

7 “(2) TOBACCO PRODUCT REQUIREMENTS WAIV-
8 ER BOARD.—

9 “(A) AUTHORITY.—The Secretary shall es-
10 tablish a Tobacco Product Requirements Waiv-
11 er Board (referred to in this paragraph as the
12 ‘Waiver Board’) to provide advice and make
13 recommendations to the Secretary with respect
14 to the approval or disapproval of petitions sub-
15 mitted under paragraph (1).

16 “(B) MEMBERSHIP.—The Waiver Board
17 shall be composed of 9 members to be ap-
18 pointed by the Secretary, of which—

19 “(i) 3 members shall be appointed
20 from among individuals who are officers or
21 employees of the Federal Government or a
22 State or local government;

23 “(ii) 2 members shall be appointed
24 from among individuals who are represent-

1 atives of the interests of the cigarette and
2 smokeless tobacco industries;

3 “(iii) 2 members shall be appointed
4 from among individuals who are represent-
5 atives of the interests of physicians and
6 other health professionals; and

7 “(iv) 2 members shall be appointed
8 from among individuals who are represent-
9 atives of the interests of the general public.

10 “(C) CHAIRPERSON.—The Secretary shall
11 designate 1 of the members of the Waiver
12 Board to serve as the Chairperson.

13 “(D) COMPENSATION AND EXPENSES.—

14 “(i) COMPENSATION.—Members of
15 the Waiver Board who are not officers or
16 employees of the United States, while at-
17 tending conferences or meetings of the
18 Waiver Board or otherwise serving at the
19 request of the Secretary, shall be entitled
20 to receive compensation at rates to be fixed
21 by the Secretary, which rates may not ex-
22 ceed the daily equivalent of the rate of pay
23 for level 4 of the Senior Executive Sched-
24 ule under section 5382 of title 5, United

1 States Code, for each day (including trav-
2 eltime) they are so engaged.

3 “(ii) EXPENSES.—While conducting
4 the business of the Waiver Board away
5 from their homes or regular places of busi-
6 ness, each member may be allowed travel
7 expenses, including per diem in lieu of sub-
8 sistence, as authorized by section 5703 of
9 title 5 of the United States Code for per-
10 sons in the Government service employed
11 intermittently.

12 “(3) ACTION ON PETITION.—

13 “(A) IN GENERAL.—Not later than 120
14 days of the date on which the Secretary receives
15 the recommendations of the Waiver Board, the
16 Secretary shall issue an order approving or de-
17 nying a petition submitted under paragraph (1).

18 The Secretary may approve—

19 “(i) a petition for an exemption for a
20 tobacco product from a requirement if the
21 Secretary determines that compliance with
22 such requirement is not required to assure
23 that the product will comply with this sec-
24 tion and is otherwise consistent with the
25 public health; and

1 “(ii) a petition for a variance for a to-
2 bacco product from a requirement if the
3 Secretary determines that the methods to
4 be used in, and the facilities and controls
5 to be used for, the manufacture, packing,
6 and storage of the product in lieu of the
7 methods, controls, and facilities prescribed
8 by the requirement are sufficient to ensure
9 that the product will comply with this sec-
10 tion and is otherwise in compliance with
11 the public health.

12 “(B) CONDITIONS.—An order of the Sec-
13 retary approving a petition for a variance shall
14 prescribe such conditions respecting the meth-
15 ods used in, and the facilities and controls used
16 for, the manufacture, packing, and storage of
17 the tobacco product to be granted the variance
18 under the petition as may be necessary to en-
19 sure that the product will comply with this sec-
20 tion.

21 “(4) INFORMAL HEARING.—After the issuance
22 of an order under paragraph (3) respecting a peti-
23 tion, the petitioner shall have an opportunity for an
24 informal hearing on such order.

“(d) EFFECTIVE DATE OF CERTAIN REGULA-
TIONS.—Regulations promulgated under this section shall
be implemented over a 2-year period in consultation with
manufacturers of tobacco products and tobacco producers.

5. "SEC. 905. TOBACCO PRODUCT LABELING, WARNING, AND
6. PACKAGING STANDARDS.

7 “(a) CIGARETTES.—

8 “(1) IN GENERAL.—

9 “(A) PACKAGING.—It shall be unlawful for
10 any person to manufacture, package, or import
11 for sale or distribution within the United States
12 any cigarettes the package of which fails to
13 bear, in accordance with the requirements of
14 this subsection, one of the following statements:

15 "WARNING: Cigarettes Are Addictive.

16 “WARNING: Tobacco Smoke Can Harm
17 Your Children.

18 “WARNING: Cigarettes Cause Fatal Lung
19 Disease.

20 "WARNING: Cigarettes Cause Cancer.

21 “WARNING: Cigarettes Cause Strokes
22 And Heart Disease.

23 “WARNING: Smoking During Pregnancy
24 Can Harm Your Baby.

25 "WARNING: Smoking Can Kill You.

1 “WARNING: Tobacco Smoke Causes
2 Fatal Lung Disease In Nonsmokers.

3 “WARNING: Quitting Smoking Now
4 Greatly Reduces Serious Risks To Your
5 Health.

6 “(B) ADVERTISING.—It shall be unlawful
7 for any manufacturer or importer of cigarettes
8 to advertise or cause to be advertised within the
9 United States any cigarette unless the advertis-
10 ing bears, in accordance with the requirements
11 of this subsection, one of the following state-
12 ments:

13 “WARNING: Cigarettes Are Addictive.

14 “WARNING: Tobacco Smoke Can Harm
15 Your Children.

16 “WARNING: Cigarettes Cause Fatal Lung
17 Disease.

18 “WARNING: Cigarettes Cause Cancer.

19 “WARNING: Cigarettes Cause Strokes
20 And Heart Disease.

21 “WARNING: Smoking During Pregnancy
22 Can Harm Your Baby.

23 “WARNING: Smoking Can Kill You.

24 “WARNING: Tobacco Smoke Causes
25 Fatal Lung Disease In Nonsmokers.

1 “WARNING: Quitting Smoking Now
2 Greatly Reduces Serious Risks To Your
3 Health.

4 “(2) REQUIREMENTS FOR LABEL STATE-
5 MENTS.—

6 “(A) LOCATION.—Each label statement re-
7 quired by subparagraph (A) of paragraph (1)
8 shall be located on the upper portion of the
9 front panel of the cigarette package (or carton)
10 and occupy not less than 25 percent of such
11 front panel.

12 “(B) TYPE AND COLOR.—With respect to
13 each label statement required by subparagraph
14 (A) of paragraph (1), the phrase ‘WARNING’
15 shall appear in capital letters and the label
16 statement shall be printed in 17 point type with
17 adjustments as determined appropriate by the
18 Secretary to reflect the length of the required
19 statement. All the letters in the label statement
20 shall appear in conspicuous and legible type, in
21 contrast by typography, layout, or color with all
22 other printed material on the package, and be
23 printed in an alternating black-on-white and
24 white-on-black format as determined appro-
25 priate by the Secretary.

1 “(C) EXCEPTION.—The provisions of sub-
2 paragraph (A) shall not apply in the case of a
3 flip-top cigarette package (offered for sale on
4 April 1, 1997) where the front portion of the
5 flip-top does not comprise at least 25 percent of
6 the front panel. In the case of such a package,
7 the label statement required by subparagraph
8 (A) of paragraph (1) shall occupy the entire
9 front portion of the flip top.

10 “(3) REQUIREMENTS FOR ADVERTISING.—

11 “(A) LOCATION.—Each label statement re-
12 quired by subparagraph (B) of paragraph (1)
13 shall occupy not less than 20 percent of the
14 area of the advertisement involved.

15 “(B) TYPE AND COLOR.—

16 “(i) TYPE.—With respect to each
17 label statement required by subparagraph
18 (B) of paragraph (1), the phrase ‘WARN-
19 ING’ shall appear in capital letters and the
20 label statement shall be printed in the fol-
21 lowing types:

22 “(I) With respect to whole page
23 advertisements on broadsheet news-
24 paper—45 point type.

1 “(II) With respect to half page
2 advertisements on broadsheet news-
3 paper—39 point type.

4 “(III) With respect to whole page
5 advertisements on tabloid news-
6 paper—39 point type.

7 “(IV) With respect to half page
8 advertisements on tabloid news-
9 paper—27 point type.

10 “(V) With respect to DPS maga-
11 zine advertisements—31.5 point type.

12 “(VI) With respect to whole page
13 magazine advertisements—31.5 point
14 type.

15 “(VII) With respect to 28cm x 3
16 column advertisements—22.5 point
17 type.

18 “(VIII) With respect to 20cm x 2
19 column advertisements—15 point
20 type.

21 The Secretary may revise the required type
22 sizes as the Secretary determines appro-
23 priate within the 20 percent requirement.

24 “(ii) COLOR.—All the letters in the
25 label statement under this subparagraph

1 shall appear in conspicuous and legible
2 type, in contrast by typography, layout, or
3 color with all other printed material in the
4 advertisement, and be printed in an alter-
5 nating black-on-white and white-on-black
6 format as determined appropriate by the
7 Secretary.

8 “(4) ROTATION OF LABEL STATEMENTS.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), the label statements speci-
11 fied in subparagraphs (A) and (B) of paragraph
12 (1) shall be rotated by each manufacturer or
13 importer of cigarettes quarterly in alternating
14 sequence on packages of each brand of ciga-
15 rettes manufactured by the manufacturer or
16 importer and in the advertisements for each
17 such brand of cigarettes in accordance with a
18 plan submitted by the manufacturer or im-
19 porter and approved by the Secretary. The Sec-
20 retary shall approve a plan submitted by a
21 manufacturer or importer of cigarettes which
22 will provide the rotation required by this para-
23 graph and which assures that all of the label
24 statements required by subparagraphs (A) and

1 (B) will be displayed by the manufacturer or
2 importer at the same time.

3 “(B) APPLICATION OF OTHER ROTATION
4 REQUIREMENTS.—

5 “(i) IN GENERAL.—A manufacturer
6 or importer of cigarettes may apply to the
7 Secretary to have the rotation schedule de-
8 scribed in clause (iii) apply with respect to
9 a brand style of cigarettes manufactured
10 or imported by such manufacturer or im-
11 porter if—

12 “(I) the number of cigarettes of
13 such brand style sold in the fiscal year
14 of the manufacturer or importer pre-
15 ceding the submission of the applica-
16 tion is less than $\frac{1}{4}$ of 1 percent of all
17 the cigarettes sold in the United
18 States in such year; and

19 “(II) more than $\frac{1}{2}$ of the ciga-
20 rettes manufactured or imported by
21 such manufacturer or importer for
22 sale in the United States are
23 packaged into brand styles which meet
24 the requirements of subclause (I).

1 If an application is approved by the Sec-
2 retary, the rotation schedule described in
3 clause (iii) shall apply with respect to the
4 applicant during the 1-year period begin-
5 ning on the date of the application ap-
6 proval.

7 “(ii) PLAN.—An applicant under
8 clause (i) shall include in its application a
9 plan under which the label statements
10 specified in subparagraph (A) of paragraph
11 (1) will be rotated by the applicant manu-
12 facturer or importer in accordance with the
13 label rotation described in clause (iii).

14 “(iii) OTHER ROTATION REQUIRE-
15 MENTS.—Under the rotation schedule
16 which the manufacturer or importer with
17 an approved application may put into ef-
18 fect, each of the label statements specified
19 in subparagraph (A) of paragraph (1) shall
20 appear on the packages of each brand style
21 of cigarettes with respect to which the ap-
22 plication was approved an equal number of
23 times within the 12-month period begin-
24 ning on the date of the approval by the
25 Secretary of the application.

1 “(5) APPLICATION OF REQUIREMENT.—Para-
2 graph (1) does not apply to a distributor or retailer
3 of cigarettes who does not manufacture, package, or
4 import cigarettes for sale or distribution within the
5 United States.

6 “(6) TELEVISION AND RADIO ADVERTISING.—It
7 shall be unlawful to advertise cigarettes and little ci-
8 gars on any medium of electronic communications
9 subject to the jurisdiction of the Federal Commu-
10 nications Commission.

11 “(b) SMOKELESS TOBACCO.—

12 “(1) IN GENERAL.—

13 “(A) PACKAGING.—It shall be unlawful for
14 any person to manufacture, package, or import
15 for sale or distribution within the United States
16 any smokeless tobacco the package of which
17 fails to bear, in accordance with the require-
18 ments of this subsection, one of the following
19 statements:

20 WARNING: This Product May Cause
21 Mouth Cancer.

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

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

1 WARNING: Smokeless Tobacco Is Addict-
2 ive.

3 “(B) ADVERTISING.—It shall be unlawful
4 for any manufacturer or importer of smokeless
5 tobacco to advertise or cause to be advertised
6 within the United States any smokeless tobacco
7 unless the advertising bears, in accordance with
8 the requirements of this subsection, one of the
9 following statements:

10 WARNING: This Product May Cause
11 Mouth Cancer.

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

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

16 WARNING: Smokeless Tobacco Is Addict-
17 ive.

18 “(2) REQUIREMENTS FOR LABEL STATE-
19 MENTS.—

20 “(A) LOCATION.—Each label statement re-
21 quired by subparagraph (A) of paragraph (1)
22 shall be located on the principal display panel
23 of the product and occupy not less than 25 per-
24 cent of such panel.

1 “(B) TYPE AND COLOR.—With respect to
2 each label statement required by subparagraph
3 (A) of paragraph (1), the phrase ‘WARNING’
4 shall appear in capital letters and the label
5 statement shall be printed in 17 point type with
6 adjustments as determined appropriate by the
7 Secretary to reflect the length of the required
8 statement. All the letters in the label statement
9 shall appear in conspicuous and legible type in
10 contrast by typography, layout, or color with all
11 other printed material on the package and be
12 printed in an alternating black on white and
13 white on black format as determined appro-
14 priate by the Secretary.

15 “(3) ADVERTISING AND ROTATION.—The provi-
16 sions of paragraphs (3) and (4)(A) of subsection (a)
17 shall apply to advertisements for smokeless tobacco
18 and the rotation of the statements required under
19 paragraph (1)(A) on such products.

20 “(4) APPLICATION OF REQUIREMENT.—Para-
21 graph (1) does not apply to a distributor or retailer
22 of smokeless tobacco who does not manufacture,
23 package, or import such products for sale or dis-
24 tribution within the United States.

1 “(5) TELEVISION AND RADIO ADVERTISING.—It
2 shall be unlawful to advertise smokeless tobacco on
3 any medium of electronic communications subject to
4 the jurisdiction of the Federal Communications
5 Commission.

6 “(c) ADDITIONAL TOBACCO PRODUCT STATE-
7 MENTS.—

8 “(1) REQUIREMENT.—Each manufacturer, dis-
9 tributor, and retailer advertising or causing to be
10 advertised, disseminating or causing to be dissemi-
11 nated advertising concerning tobacco products oth-
12 erwise permitted under this chapter shall include, in
13 a type size and format as the Secretary may pre-
14 scribe in a regulation promulgated under subsection
15 (d), the product name and a statement of the gen-
16 eral use of the product as provided for in paragraph
17 (2).

18 “(2) GENERAL USE STATEMENTS.—

19 “(A) CIGARETTES.—A statement of gen-
20 eral use for cigarettes or cigarette tobacco is as
21 follows (whichever is appropriate):

22 ‘Cigarettes—A Dangerous Tobacco Product In-
23 tended For Use Only By Persons 18 or Older.

1 'Cigarette Tobacco—A Dangerous Tobacco
2 Product Intended For Use Only By Persons 18
3 or Older.

4 "(B) SMOKELESS TOBACCO.—A statement
5 of general use for a smokeless tobacco is as fol-
6 lows (whichever is appropriate):

7 'Loose Leaf Chewing Tobacco—A Dangerous
8 Tobacco Product Intended For Use Only By
9 Persons 18 or Older.

10 'Plug Chewing Tobacco—A Dangerous Tobacco
11 Product Intended For Use Only By Persons 18
12 or Older.

13 'Twist Chewing Tobacco—A Dangerous To-
14 bacco Product Intended For Use Only By Per-
15 sons 18 or Older.

16 'Moist Snuff—A Dangerous Tobacco Product
17 Intended For Use Only By Persons 18 or
18 Older.

19 'Dry Snuff—A Dangerous Tobacco Product In-
20 tended For Use Only By Persons 18 or Older.

21 "(d) REGULATIONS.—

22 "(1) IN GENERAL.—Not later than 180 days
23 after the date of the enactment of this title, the Sec-
24 retary shall promulgate such regulations as may be
25 necessary to implement subsections (a), (b), and (c).

1 “(2) AUTHORITY TO REVISE TOBACCO PRODUCT
2 LABELING STATEMENTS.—

3 “(A) IN GENERAL.—The Secretary may by
4 informal notice and comment rulemaking
5 change the text and format of any of the state-
6 ments required under subsections (a) and (b). A
7 rule promulgated under this subparagraph shall
8 not become effective prior to the expiration of
9 the 1-year period beginning on the date on
10 which the final rule is published in the Federal
11 Register.

12 “(B) LIMITATION.—The Secretary may
13 not promulgate any rule under subparagraph
14 (A) during the 5-year period beginning on the
15 effective date of the PAST Act unless the Sec-
16 retary can demonstrate extraordinary cir-
17 cumstances.

18 “(C) ASSESSMENTS.—The Secretary, in
19 consultation with the Tobacco Products Sci-
20 entific Advisory Committee and other relevant
21 experts, shall, as scientific data regarding the
22 effectiveness of warning labels in deterring
23 youth smoking becomes available, periodically
24 (but not more frequently than once every 3
25 years) assess the efficacy of current labels and

1 the public health benefits of revising such la-
2 bels.

3 “(3) COMMON OR USUAL NAMES.—The Sec-
4 retary, in accordance with the procedures set forth
5 in section 903, shall promulgate regulations requir-
6 ing the disclosure to the public of the common or
7 usual name of each ingredient (other than tobacco,
8 water, or reconstituted tobacco sheet made wholly
9 from tobacco) contained in a tobacco product in de-
10 scending order of predominance by weight, except
11 that such regulations—

12 “(A) may provide for the disclosure of
13 spices, flavorings, and colorings without naming
14 each spice, flavoring, or coloring; and

15 “(B) may exempt from disclosure inciden-
16 tal additives, including processing aids and
17 chemical preservatives, that are present in a to-
18 bacco product at insignificant levels that the
19 Secretary determines do not have any func-
20 tional effect or health risk.

21 “(e) EXPORTS.—Packages of cigarettes or smokeless
22 tobacco manufactured, imported, or packaged—

23 “(1) for export from the United States: or

1 “(2) for delivery to a vessel or aircraft, as sup-
2 plies, for consumption beyond the jurisdiction of the
3 internal revenue laws of the United States;
4 shall be exempt from the requirements of this chapter, but
5 such exemptions shall not apply to cigarettes or smokeless
6 tobacco manufactured, imported, or packaged for sale or
7 distribution to members or units of the Armed Forces of
8 the United States located outside of the United States.

9 **“SEC. 906. RESTRICTION ON MARKETING AND ADVERTIS-**
10 **ING.**

11 “(a) PROHIBITIONS ON ADVERTISING.—

12 “(1) PROHIBITION ON OUTDOOR ADVERTIS-

13 ING.—

14 “(A) IN GENERAL.—No manufacturer, dis-
15 tributor, or retailer may use any form of out-
16 door tobacco product advertising, including bill-
17 boards, posters, placards, or other fixed or mov-
18 able outdoor product advertising within 1,000
19 feet of the perimeter of any elementary or sec-
20 ondary school, or with 1,000 feet of the perim-
21 eter of a public playground, pool, or playground
22 area in a public park.

23 “(B) STADIA AND ARENAS.—A manufac-
24 turer, distributor, or retailer shall not advertise
25 by signage or other means that is fixed and per-

1 manent, tobacco products in any arena or sta-
2 dium where athletic, musical, artistic, or other
3 social or cultural events or activities occur un-
4 less such advertising takes place during an ath-
5 letic, musical, artistic or other social or cultural
6 event or activity that does not include a signifi-
7 cant number of individuals who are under 18
8 years of age in the audience.

9 “(2) PROHIBITION ON USE OF HUMAN IMAGES
10 AND CARTOONS.—No manufacturer, distributor, or
11 retailer may use a human image or a cartoon char-
12 acter or cartoon-type character in its advertising, la-
13 beling, or promotional material with respect to a to-
14 bacco product.

15 “(3) PROHIBITION ON ADVERTISING ON THE
16 INTERNET.—No manufacturer, distributor, or re-
17 tailer may use the Internet to advertise tobacco
18 products unless such an advertisement is—

19 “(A) inaccessible in or from the United
20 States; or

21 “(B) located at an Internet site that is not
22 likely to be viewed by a significant number of
23 individual who are under 18 years of age.

24 “(4) PROHIBITION ON POINT-OF-SALE ADVER-
25 TISING.—

1 “(A) IN GENERAL.—Except as otherwise
2 provided in this paragraph, no manufacturer,
3 distributor, or retailer may use point-of-sale ad-
4 vertising of tobacco products.

5 “(B) PERMISSIBLE ADVERTISING.—

6 “(i) IN GENERAL.—Each manufac-
7 turer of tobacco products may display not
8 more than 2 separate point-of-sale adver-
9 tisements in or at each location at which
10 tobacco products are offered for sale.

11 “(ii) RETAILERS.—A retailer may
12 have not more than 1 point-of-sale adver-
13 tisement relating to the retailer’s own or
14 its wholesaler’s contracted retailer or pri-
15 vate label brand of tobacco product.

16 “(C) LIMITATIONS.—

17 “(i) IN GENERAL.—A point of sale ad-
18 vertisement permitted under this para-
19 graph shall be comprised of a display area
20 that is not larger than 576 square inches
21 (either individually or in the aggregate)
22 and shall consist only of black letters on a
23 white background or other recognized typo-
24 graphical marks. Such advertisement shall
25 not be attached to nor located within 2 feet

1 of any fixture on which candy is displayed
2 for sale.

3 “(ii) AUDIO AND VIDEO FORMATS.—
4 Audio and video advertisements permitted
5 under subsection (c)(3) may be distributed
6 to individuals who are 18 years of age or
7 older at point of sale but may not be
8 played or viewed at such point of sale.

9 “(iii) DISPLAY FIXTURES.—Display
10 fixtures in the form of signs consisting of
11 brand name and price and not larger than
12 2 inches in height are permitted.

13 “(D) DEFINITION.—For purposes of this
14 paragraph, the term ‘point-of-sale advertising’
15 means all printed or graphical materials bearing
16 the brand name (alone or in conjunction with
17 any other word), logo, motto, selling message,
18 recognizable color or pattern of colors, or any
19 other indicia of product identification similar or
20 identical to those used for tobacco products
21 which, when used for its intended purpose, can
22 reasonably be anticipated to be seen by cus-
23 tomers at a location at which tobacco products
24 are offered for sale.

25 “(b) GENERAL RESTRICTIONS.—

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

9 “(2) ADVERTISING LIMITED TO FDA SPECIFIED
10 MEDIA.—

11 “(A) IN GENERAL.—A manufacturer, dis-
12 tributor, or retailer may, in accordance with
13 this chapter, disseminate or cause to be dis-
14 seminated advertising or labeling which bears a
15 tobacco product brand name (alone or in con-
16 junction with any other word) or any other indi-
17 cia of tobacco product identification only in
18 newspapers, in magazines, in periodicals or
19 other publications (whether periodic or limited
20 distribution), in nonpoint-of-sale promotional
21 material (including direct mail), in point-of-sale
22 promotional material, and in audio or video for-
23 mats delivered at a point-of-sale without notice
24 to the Secretary.

1 “(B) LIMITATION.—A manufacturer, dis-
2 tributor, or retailer that intends to disseminate,
3 or to cause to be disseminated, advertising or
4 labeling for a tobacco product in a medium that
5 is not described in subparagraph (A) shall no-
6 tify the Commissioner not less than 30 days
7 prior to the date on which such medium is to
8 be used. Such notice shall describe the medium
9 and discuss the extent to which the advertising
10 or labeling may be seen by individuals who are
11 under 18 years of age.

12 “(3) RESTRICTION ON PLACEMENT IN ENTER-
13 TAINMENT MEDIA.—

14 “(A) IN GENERAL.—No direct or indirect
15 payment shall be made by any manufacturer,
16 distributor, or retailer for the placement or use
17 of any tobacco product or tobacco product pack-
18 age or advertisement—

19 “(i) as a prop in any television pro-
20 gram or motion picture likely to be viewed
21 by a significant number of individuals who
22 are under 18 years of age; or

23 “(ii) in a video or on a video game
24 machine.

1 sion involved from selling tobacco
2 products:

3 “(II) is not visible from outside
4 of the facility; and

5 “(III) is affixed to a wall or fix-
6 ture in the facility; and

7 “(ii) that appears in any publication
8 (whether periodic, limited, or controlled
9 distribution) that the manufacturer, dis-
10 tributor, or retailer demonstrates is an
11 adult publication.

12 “(B) ADULT PUBLICATION.—For purposes
13 of subparagraph (A)(ii), the term ‘adult publi-
14 cation’ means a newspaper, magazine, periodi-
15 cal, or other publication—

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

20 “(ii) that is read by fewer than
21 2,000,000 individuals who are under 18
22 years of age as measured by competent
23 and reliable survey evidence.

24 “(3) AUDIO OR VIDEO FORMATS.—Each manu-
25 facturer, distributor, and retailer advertising or

1 causing to be advertised any advertising for a to-
2 bacco product in an audio or video format shall com-
3 ply with the following:

4 “(A) With respect to an audio format, the
5 advertising shall be limited to words only with
6 no music or sound effects.

7 “(B) With respect to a video format, the
8 advertising shall be limited to static black text
9 only on a white background. Any audio with the
10 video advertising shall be limited to words only
11 with no music or sound effects.

12 “(d) BAN ON NONTOBACCO ITEMS AND SERVICES,
13 CONTESTS AND GAMES OF CHANCE, AND SPONSORSHIP
14 OF EVENTS.—

15 “(1) BAN ON ALL NONTOBACCO MERCHAN-
16 DISE.—No manufacturer, importer, distributor, or
17 retailer shall market, license, distribute, sell, or
18 cause to be marketed, licensed, distributed or sold
19 any item (other than tobacco products) or service
20 which bears the brand name (alone or in conjunction
21 with any other word), logo, symbol, motto, selling
22 message, recognizable color or pattern of colors, or
23 any other indicia of product identification similar or
24 identifiable to those used for any brand of tobacco
25 products.

1 “(2) GIFTS, CONTESTS, AND LOTTERIES.—No
2 manufacturer, distributor, or retailer shall offer or
3 cause to be offered to any person purchasing tobacco
4 products any gift or item (other than a tobacco
5 product) in consideration of the purchase of such
6 products, or to any person in consideration of fur-
7 nishing evidence, such as credits, proofs-of-purchase,
8 or coupons, of such a purchase.

9 “(3) SPONSORSHIP.—

10 “(A) IN GENERAL.—No manufacturer, dis-
11 tributor, or retailer shall sponsor or cause to be
12 sponsored any athletic, musical, artistic, or
13 other social or cultural event, or any entry or
14 team in any event, in which the brand name
15 (alone or in conjunction with any other word),
16 logo, motto, selling message, recognizable color
17 or pattern of colors, or any other indicia of
18 product identification similar or identical to
19 those used for tobacco products is used.

20 “(B) USE OF CORPORATE NAME.—A man-
21 ufacturer, distributor, or retailer may sponsor
22 or cause to be sponsored any athletic, musical,
23 artistic, or other social or cultural event in the
24 name of the corporation which manufactures
25 the tobacco product if—

1 “(i) both the corporate name and the
2 corporation were registered and in use in
3 the United States prior to January 1,
4 1995; and

5 “(ii) the corporate name does not in-
6 clude any brand name (alone or in con-
7 junction with any other word), logo, sym-
8 bol, motto, selling message, recognizable
9 color or pattern of colors, or any other in-
10 dicia or product identification identical or
11 similar to, or identifiable with, those used
12 for any brand of tobacco products.

13 “(e) **ADDITIONAL RESTRICTIONS.**—The Secretary
14 may by informal notice and comment rulemaking impose
15 additional restriction on the marketing and advertising of
16 tobacco products if the Secretary determines that such
17 marketing and advertising is significantly contributing to
18 the use of tobacco products by individuals who are under
19 18 years of age.

20 **“SEC. 907. REDUCED RISK TOBACCO PRODUCTS.**

21 “(a) **REQUIREMENTS.**—

22 “(1) **IN GENERAL.**—For purposes of this chap-
23 ter, the term ‘Reduced Risk Tobacco Product’
24 means a tobacco product that delivers nicotine to the
25 human body while simultaneously delivering 1 or

1 more other toxic substances to the human body, and
2 which the Secretary designates as a Reduced Risk
3 Tobacco product under paragraph (2).

4 “(2) DESIGNATION.—A product shall be des-
5 ignated by the Secretary as a Reduced Risk Tobacco
6 Product if—

7 “(A) the Secretary finds that the product
8 has the potential to reduce harm to individuals
9 and overall public health caused by a tobacco
10 product, based on an application submitted by
11 the manufacturer of the product (or other re-
12 sponsible person) that—

13 “(i) demonstrates, on the basis of
14 chemical analysis, that use of such product
15 results in ingestion or inhalation of a sub-
16 stantially lower yield of toxic substances
17 than use of conventional tobacco products
18 in the same category as the proposed re-
19 duced risk product; and

20 “(ii) demonstrates, through testing on
21 animals and short-term human testing,
22 that use of the product presents substan-
23 tially less risk to human health than use of
24 conventional tobacco products; and

1 “(B) the manufacturer (or other person) agrees
2 to conduct studies of the long-term health effects of
3 such product (in accordance with 1 or more proto-
4 cols agreed upon between the manufacturer of the
5 product and the Secretary) and submit the results of
6 such study, together with underlying data, to the
7 Secretary.

8 “(3) MARKETING REQUIREMENTS.—A tobacco
9 product may be marketed as a Reduced Risk To-
10 bacco Product only if such product—

11 “(A) bears a label, prescribed by the Secretary,
12 stating that the product contains toxic substances
13 other than nicotine, that such product should only
14 be used by persons who use tobacco products, and
15 other relevant information;

16 “(B) bears a label, as prescribed by the Sec-
17 retary, concerning the product’s contribution to re-
18 ducing harm to health; and

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

23 “(b) REVOCATION OF DESIGNATION.—At any time
24 after the expiration of the 5-year period beginning on the
25 date on which a tobacco product is designated as a Re-

1 duced Risk Tobacco Product under this section the Sec-
2 retary may, after providing an opportunity for an informal
3 hearing, revoke such designation if the Secretary deter-
4 mines, based on information not available at the time of
5 the designation, that—

6 “(1) the finding made under subsection
7 (a)(2)(A) is no longer valid; or

8 “(2) the studies required under subsection
9 (a)(2)(B) are not conducted on a timely basis.

10 “(c) STUDIES.—The Secretary, in consultation with
11 the Tobacco Products Scientific Advisory Committee, shall
12 conduct and support, through grants and contracts, stud-
13 ies of the role of smoking cessation products and reduced
14 risk tobacco products in reducing the burden of illness and
15 death in the United States resulting from the use of to-
16 bacco products.

17 “(d) LIMITATION.—A tobacco product that is des-
18 ignated as a Reduced Risk Tobacco Product that is com-
19 pliance with subsection (a) shall not be regulated as a
20 drug or device.

21 “(e) DEVELOPMENT OF REDUCED RISK TOBACCO
22 PRODUCT TECHNOLOGY.—

23 “(1) NOTIFICATION OF SECRETARY.—The man-
24 ufacturer of a tobacco product shall provide written
25 notice to the Secretary upon the development or ac-

1 quisition by the manufacturer of any technology that
2 would reduce the risk of such products to the health
3 of the user for which the manufacturer is not seek-
4 ing designation as a 'Reduced Risk Tobacco Prod-
5 uct' under subsections (a) and (b).

6 “(2) DETERMINATION.—Within 6 months of
7 the date on which a notice is received by the Sec-
8 retary under paragraph (1), the Secretary shall de-
9 termine whether the technology described in such
10 notice is likely to result in tobacco products that are
11 less hazardous to the health of users.

12 “(3) CONFIDENTIALITY.—The Secretary shall,
13 not later than 180 days after the date of enactment
14 of this chapter, promulgate regulations to provide a
15 manufacturer with appropriate confidentiality pro-
16 tections with respect to technology that is the sub-
17 ject of a determination under paragraph (2).

18 “(4) LICENSING.—

19 “(A) IN GENERAL.—With respect to any
20 technology for which a notification has been
21 provided under paragraph (1), the manufac-
22 turer shall permit the use of such technology by
23 other manufacturers of tobacco products to
24 which this chapter applies if the manufacturer

1 elects not to develop and market such tech-
2 nology.

3 “(B) FEES.—The Secretary of Commerce
4 shall, not later than 180 days after the date of
5 enactment of this chapter, promulgate regula-
6 tions to provide for the payment of a commer-
7 cially reasonable fee by each manufacturer that
8 uses the technology described under subpara-
9 graph (A) to the manufacturer that submits the
10 notice under paragraph (1) for such technology.
11 Such regulations shall contain procedures for
12 the resolution of fee disputes between manufac-
13 turers under this subparagraph through the use
14 of expert arbitrators.

15 “(f) REQUIREMENT OF MANUFACTURE AND MAR-
16 KETING.—

17 “(1) PURPOSE.—It is the purpose of this sub-
18 section to provide for a mechanism to create incen-
19 tives that help ensure that tobacco products that are
20 designed to be less hazardous to the health of users
21 are developed, tested, and made available to consum-
22 ers.

23 “(2) DETERMINATION.—Upon a determination
24 by the Secretary that the manufacture of a tobacco
25 product that is less hazardous to the health of users

1 is technologically and commercially feasible, the Sec-
2 retary may, in accordance with this subsection and
3 through the issuance or amendment of a health risk
4 reduction standard under section 903—

5 “(A) require the disclosure of the existence
6 of such technology;

7 “(B) prohibit the use of technology that is
8 superseded by such new technology; and

9 “(C) require that manufacturers cease
10 manufacturing and marketing tobacco products
11 that do not incorporate such technology.

12 “(g) BASIS FOR DETERMINATION.—For purposes of
13 subsections (e)(2) and (f)(2), the determination as to
14 whether a tobacco product may be less hazardous to the
15 health of users shall take into account the reduced risk
16 to the health of the user, its contribution to reducing ad-
17 diction to tobacco products, and the overall public health.

18 **“SEC. 908. TOBACCO PRODUCTS SCIENTIFIC ADVISORY**
19 **COMMITTEE.**

20 “(a) ESTABLISHMENT.—Not later than 1 year after
21 the date of enactment of this chapter, the Secretary shall
22 establish an advisory committee, to be known as the ‘To-
23 bacco Products Scientific Advisory Committee’, to assist
24 the Secretary in establishing, amending, or revoking a reg-
25 ulation promulgated under section 903, 904, 905, or 907.

1 “(b) MEMBERSHIP.—

2 “(1) IN GENERAL.—The Secretary shall appoint
3 as members of the Tobacco Products Scientific Advi-
4 sory Committee—

5 “(A) individuals with expertise in the med-
6 icine, science, or technology involving the manu-
7 facture and use of tobacco products, who are of
8 appropriately diversified professional back-
9 grounds;

10 “(B) individuals with expertise in law or
11 ethics;

12 “(C) a representative of tobacco product
13 manufacturers;

14 “(D) a representative of the general public
15 selected from public health organizations; and

16 “(E) a representative of the general public
17 selected from organizations representing users
18 of tobacco products.

19 “(2) LIMITATION.—The Secretary may not ap-
20 point to the Advisory Committee any individual who
21 is in the regular full-time employ of the Federal
22 Government. The Secretary may appoint Federal of-
23 ficials as ex-officio members.

1 “(3) CHAIRPERSON.—The Secretary shall des-
2 ignate 1 of the members of advisory committee to
3 serve as chairperson of the Advisory Committee.

4 “(c) DUTIES.—The Tobacco Products Scientific Ad-
5 visory Committee shall—

6 “(1) assist the Secretary in establishing,
7 amending, or revoking regulations under section
8 903, 904, 905, or 907;

9 “(2) examine and make recommendations con-
10 cerning the effects of the alteration of the nicotine
11 yield levels in tobacco products;

12 “(3) examine and make recommendations con-
13 cerning whether there is a threshold level below
14 which nicotine yields do not produce dependence on
15 the tobacco product involved, and, if so, determine
16 what that level is; and

17 “(4) review other safety, dependence or health
18 issues relating to tobacco products as requested by
19 the Secretary.

20 **“SEC. 909. REPORTS.**

21 “Not later than 18 months after the date of enact-
22 ment of this chapter, and biennially thereafter, the Sec-
23 retary shall prepare and submit to Congress a report con-
24 taining—

1 “(1) a description of the current sales, advertis-
2 ing, and marketing practices associated with tobacco
3 products;

4 “(2) a description of the use patterns of tobacco
5 products, including a report on use by individuals
6 under 18 years of age;

7 “(3) a description of the effects of health pro-
8 motion and disease prevention efforts related to the
9 use of tobacco products;

10 “(4) an evaluation of the health promotion and
11 disease prevention efforts relating to tobacco prod-
12 ucts and the identification of areas appropriate for
13 further research; and

14 “(5) such recommendations for legislation and
15 administrative action relating to tobacco products as
16 the Secretary considers appropriate.

17 **“SEC. 910. JUDICIAL REVIEW.**

18 “(a) APPLICATION OF SECTION.—

19 “(1) IN GENERAL.—Not later than 60 days
20 after the effective date of any regulation under this
21 chapter establishing, amending, or revoking a health
22 risk reduction standard for a tobacco product, any
23 person adversely affected by such regulation may file
24 a petition with the United States Court of Appeals
25 for the District of Columbia or for the circuit where-

1 in such person resides or has its principal place of
2 business for judicial review of such regulation. A
3 copy of the petition shall be transmitted by the clerk
4 of the court to the Secretary or other officer des-
5 ignated by him for that purpose.

6 “(2) RECORD OF PROCEEDING.—The Secretary
7 shall file in the court under paragraph (1) the
8 record of the proceedings on which the Secretary
9 based the regulation involved as provided for in sec-
10 tion 2112 of title 28, United States Code.

11 “(3) DEFINITION.—For purposes of this sec-
12 tion, the term ‘record’ means all notices and other
13 matter published in the Federal Register with re-
14 spect to the regulation reviewed, all information sub-
15 mitted to the Secretary with respect to such regula-
16 tion, proceedings of any panel or advisory committee
17 with respect to such regulation, any hearing held
18 with respect to such regulation, and any other infor-
19 mation identified by the Secretary, in the adminis-
20 trative proceeding held with respect to such regula-
21 tion, as being relevant to such regulation.

22 “(b) ADDITIONAL DATA, VIEWS, AND ARGUMENTS.—
23 If the petitioner applies to the court under this section
24 for leave to adduce additional data, views, or arguments
25 respecting the regulation being reviewed and shows to the

1 satisfaction of the court that such additional data, views,
2 or arguments are material and that there were reasonable
3 grounds for the petitioner's failure to adduce such data,
4 views, or arguments in the proceedings before the Sec-
5 retary, the court may order the Secretary to provide addi-
6 tional opportunity for the oral presentation of data, views,
7 or arguments and for written submissions. The Secretary
8 may modify such findings, or make new findings by reason
9 of the additional data, views, or arguments so taken and
10 shall file with the court such modified or new findings,
11 and the recommendations of the Secretary, if any, for the
12 modification or setting aside of the regulation or order
13 being reviewed, with the return of such additional data,
14 views, or arguments.

15 “(c) STANDARD FOR REVIEW.—Upon the filing of the
16 petition under subsection (a) judicial review of a regula-
17 tion, the court shall have jurisdiction to review the regula-
18 tion in accordance with chapter 7 of title 5, United States
19 Code, and to grant appropriate relief, including interim
20 relief, as provided for in such chapter. A regulation pro-
21 mulgated under this chapter shall not be affirmed if it is
22 found to be arbitrary and capricious.

23 “(d) FINALITY OF JUDGMENTS.—The judgment of
24 the court affirming or setting aside, in whole or in part,
25 any regulation under this section shall be final, subject

1 to review by the Supreme Court of the United States upon
2 certiorari or certification, as provided for in section 1254
3 of title 28, United States Code.

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

7 “(f) STATEMENT OF REASONS.—To facilitate judicial
8 review under this section or under any other provision of
9 law of a regulation issued under this chapter, each such
10 regulation shall contain a statement of the reasons for its
11 issuance and the basis, in the record of the proceedings
12 held in connection with its issuance, for its issuance.

13 **“SEC. 911. AUTHORITY TO ASSESS AND USE FEES.**

14 “(a) IN GENERAL.—The Secretary shall, not later
15 than 60 days after the date of enactment of this chapter,
16 annually assess and collect fees for submissions made
17 under sections 902, 903, and 907 in accordance with this
18 section to be used as the sole source of funding with re-
19 spect to the regulation and control of tobacco products
20 under this chapter.

21 “(b) TOBACCO PRODUCT FEE.—The Secretary shall
22 set the amount of the fees under subsection (a) for a fiscal
23 year to equal \$100,000,000.

1 “(c) PAYMENT SCHEDULE.—The Secretary shall pro-
2 mulgate regulations to implement procedures for the as-
3 sessment and collection of fees under this section.

4 “(d) COLLECTION OF UNPAID FEES.—In any case
5 where the Secretary does not receive payment of a fee as-
6 sessed under subsection (b) within 30 days after it is due,
7 such fee shall be treated as a claim of the United States
8 Government subject to subchapter II of chapter 37 of title
9 31, United States Code.

10 “(e) APPORTIONMENT OF FEES.—The Secretary
11 shall, not later than 60 days after the enactment of this
12 chapter, issue regulations apportioning fees under sub-
13 section (a) among submissions required under sections
14 902, 903, and 907.

15 **“SEC. 912. PRESERVATION OF STATE AND LOCAL AUTHOR-**
16 **ITY.**

17 “(a) ADDITIONAL REQUIREMENTS.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (3), nothing in this Act shall be construed as
20 prohibiting a State or political subdivision thereof
21 from adopting or enforcing a requirement applicable
22 to a tobacco product that is in addition to, or more
23 stringent than, requirements established under this
24 chapter.

1 “(2) APPLICATION OF STATE LAW.—In the case
2 of a requirement of a State or political subdivision
3 thereof that is more stringent than a requirement
4 established under this chapter, the requirement of
5 the State or political subdivision shall apply.

6 “(3) PREEMPTION OF STATE AND LOCAL RE-
7 QUIREMENTS.—No State or political subdivision of a
8 State may establish or continue in effect with re-
9 spect to a tobacco product or manufacturer thereof
10 any requirement that relates to, and is different
11 from or in addition to, any requirement applicable
12 under sections 902, 903, 904, 905, and 907.

13 “(b) RULE OF CONSTRUCTION REGARDING PRODUCT
14 LIABILITY.—No provision of this chapter relating to a to-
15 bacco product shall be construed to modify or otherwise
16 affect any action or the liability of any person under the
17 product liability law of any State.

18 “(c) WAIVERS.—Upon the application of a State or
19 political subdivision thereof, the Secretary may, by regula-
20 tion promulgated after notice and an opportunity for an
21 oral hearing, exempt from subsection (a), under such con-
22 ditions as may be prescribed in such regulation, a require-
23 ment of such State or political subdivision applicable to
24 a tobacco product if—

1 “(1) the requirement is more stringent than a
2 requirement applicable under the provisions de-
3 scribed in subsection (a)(3) which would be applica-
4 ble to the tobacco product if an exemption were not
5 in effect under this subsection; or

6 “(2) the requirement—

7 “(A) is required by compelling local condi-
8 tions; and

9 “(B) compliance with the requirement
10 would not cause the tobacco product to be in
11 violation of any applicable requirement of this
12 chapter.

13 **“SEC. 913. AUTHORITY TO REGULATE TOBACCO PRODUCTS**
14 **OTHER THAN CIGARETTES AND SMOKELESS**
15 **TOBACCO.**

16 “(a) **AUTHORITY.**—The Secretary may, subject to
17 subsections (b), (c), and (d), promulgate regulations sub-
18 ject to notice and comment with respect to tobacco prod-
19 ucts other than cigarettes and smokeless tobacco the pur-
20 pose of which are to—

21 “(1) reduce the use of such products by individ-
22 uals under the age of 18; or

23 “(2) provide for the disclosure of information to
24 the public with respect to health risks posed by such
25 products to users of such products.

1 “(b) ACTION BY CONGRESS.—Any regulation promul-
2 gated under subsection (a) shall take effect 360 days after
3 the date such regulation appears in final form in the Fed-
4 eral Register, unless in accordance with section 801 of
5 title 5, United States Code, Congress disapprove such reg-
6 ulation.

7 “(c) APPLICABILITY OF PROCEDURES AND LIMITA-
8 TIONS FOR TOBACCO PRODUCTS TO TOBACCO PRODUCTS
9 OTHER THAN CIGARETTES OR SMOKELESS TOBACCO.—
10 Any regulation regarding tobacco products other than
11 cigarettes and smokeless tobacco to require—

12 “(1) the submission of health information re-
13 garding such products to the Secretary;

14 “(2) changes in the composition of such prod-
15 ucts;

16 “(3) the establishment of good manufacturing
17 practices for such products;

18 “(4) the establishment of labeling, warning, and
19 packaging standards for such products;

20 shall be subject to the procedures and limitations, includ-
21 ing confidentiality and protection of trade secrets, under
22 this chapter applicable to cigarettes and smokeless tobacco
23 products.

24 “(d) BASIS FOR REGULATION.—Prior to promulgat-
25 ing regulations under this section, the Secretary shall

1 make findings supported by credible scientific or medical
2 evidence with regard to the need to regulate tobacco prod-
3 ucts other than cigarettes and smokeless tobacco be-
4 cause—

5 “(1) the manufacturers of such products mar-
6 ket their products to individuals under the age of
7 18;

8 “(2) the manufacturers of such products intend
9 to deliver a dose of nicotine to consumers of such
10 products; or

11 “(3) consumers of such products intend to ob-
12 tain a dose of nicotine.

13 **“SEC. 914. SEVERABILITY AND STATEMENT OF AUTHORITY.**

14 “(a) SEVERABILITY.—If any provision of this chapter
15 or the application thereof to any person or circumstance
16 is held invalid, the invalidity shall not affect the other pro-
17 visions of this chapter and the application of such provi-
18 sion to other persons or circumstances shall not be af-
19 fected thereby.

20 “(b) TECHNICAL STATEMENT OF AUTHORITY.—The
21 regulations describing the general provisions and the re-
22 strictions on labels, labeling and advertising of tobacco
23 products promulgated by the Secretary in the rule dated
24 August 28, 1996, adding subparts A and B of part 897

1 to title 21, Code of Federal Regulations, shall be deemed
2 to have been promulgated under the this chapter.”.

3 **SEC. 102. TECHNICAL PROVISIONS.**

4 (a) **APPLICATION OF FEDERAL CIGARETTE LABEL-**
5 **ING AND ADVERTISING ACT.**—The provisions of the Fed-
6 eral Cigarette Labeling and Advertising Act (15 U.S.C.
7 1331 et seq.) that apply to cigarettes shall be superseded
8 by the provisions of this title (and the amendments made
9 by this title).

10 (b) **REPEAL.**—The Comprehensive Smokeless To-
11 bacco Health Education Act of 1986 (15 U.S.C. 4401 et
12 seq.) is repealed.

13 (c) **PRESERVATION OF FEDERAL TRADE COMMIS-**
14 **SION AUTHORITY.**—Nothing in this title, or an amend-
15 ment made by this title, shall be construed to limit the
16 authority of the Federal Trade Commission to regulate the
17 advertising and marketing of tobacco products pursuant
18 to its authority under sections 5 and 12 of the Federal
19 Trade Commission Act.

20 **SEC. 103. FEDERAL LICENSING OF MILITARY AND OTHER**
21 **ENTITIES.**

22 (a) **IN GENERAL.**—The Secretary, in consultation
23 with the Secretary of Defense, Secretary of State, and
24 other appropriate Federal officials, shall establish and im-

1 plement a Federal tobacco licensing program to be applied
2 to entities that sell or distribute tobacco products—

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

5 (2) in any United States embassy;

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

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

11 (5) through any other Federal entity or on any
12 other Federal property as determined appropriate by
13 the Secretary.

14 (b) REQUIREMENTS OF PROGRAM.—The program es-
15 tablished under subsection (a) shall apply requirements
16 (including those for penalties, suspensions, and revoca-
17 tions) similar to those required to be implemented by
18 States under this title (and the amendments made by this
19 title).

20 (c) INDIAN TRIBES AND TRIBAL LANDS.—For pur-
21 poses of applying and enforcing the provisions of this title
22 (and the amendments made by this title) to entities that
23 sell or otherwise distribute tobacco products on Indian res-
24 ervations (as defined in section 403(9) of the Indian Child
25 Protection and Family Violence Prevention Act (25 U.S.C.

1 3202(9))), an Indian tribe or tribal organization shall be
2 treated as a State.

3 **TITLE II—NATIONAL EFFORTS**
4 **TO REDUCE YOUTH SMOKING**

5 **SEC. 201. SHORT TITLE.**

6 This title may be cited as the “Tobacco Use by Mi-
7 nors Prevention Act”.

8 **SEC. 202. AMENDMENT TO PUBLIC HEALTH SERVICE ACT**

9 (a) IN GENERAL.—The Public Health Service Act
10 (42 U.S.C. 201 et seq.) is amended by adding at the end
11 the following:

12 **“TITLE XXVIII—NATIONAL EF-**
13 **FORTS TO REDUCE YOUTH**
14 **SMOKING**

15 **“SEC. 2801. DEFINITIONS.**

16 “For purposes of this title, the definitions contained
17 in section 900 of the Food, Drug and Cosmetic Act shall
18 apply.

19 **“Subtitle A—Required Reduction**
20 **in Underage Use of Tobacco**
21 **Products**

22 **“SEC. 2811. PURPOSE.**

23 “It is the purpose of this title to encourage the
24 achievement of dramatic and immediate reductions in the
25 proportion of underage consumers of cigarettes and

1 smokeless tobacco through the imposition of substantial
2 financial deterrents on participating manufacturers if cer-
3 tain underage tobacco-use reduction targets are not met.

4 **"SEC. 2812. DETERMINATION OF UNDERAGE USE BASELINE**
5 **LEVEL.**

6 “(a) CIGARETTES.—The Secretary, acting through
7 the Office on Smoking and Health of the Centers for Dis-
8 ease Control and Prevention, shall determine a baseline
9 level of underage use for cigarettes. Such baseline level
10 shall be a percentage, weighted by the relative population
11 of the age groups involved as determined using data com-
12 piled in 1995 by the Bureau of the Census, based on—

13 “(1) the average of the percentages of individ-
14 uals who are 16 or 17 years of age who used ciga-
15 rette on a monthly basis for each of the calendar
16 years 1986 through 1996;

17 “(2) the average of the percentages of individ-
18 uals who are 14 or 15 years of age who used ciga-
19 rette on a monthly basis for each of the calendar
20 years 1991 through 1996; and

21 “(3) the average of the percentages of individ-
22 uals who are 13 years of age who used cigarette on
23 a monthly basis for each of the calendar years 1991
24 through 1996.

1 “(b) SMOKELESS TOBACCO.—The Secretary, acting
2 through the Office on Smoking and Health of the Centers
3 for Disease Control and Prevention, shall determine a
4 baseline level of underage use for smokeless tobacco. Such
5 baseline level shall be a percentage, weighted by the rel-
6 ative population of the age groups involved as determined
7 using data compiled in 1995 by the Bureau of the Census,
8 based on—

9 “(1) the average of the percentages of individ-
10 uals who are 16 or 17 years of age who used smoke-
11 less tobacco on a monthly basis in 1996;

12 “(2) the average of the percentages of individ-
13 uals who are 14 or 15 years of age who used smoke-
14 less tobacco on a monthly basis in 1996; and

15 “(3) the average of the percentages of individ-
16 uals who are 13 years of age who used smokeless to-
17 bacco on a monthly basis in 1996.

18 “(c) MANUFACTURERS’ BASELINE LEVEL.—For pur-
19 poses of this subtitle, the term ‘manufacturers’ baseline
20 level’ means, with respect to each type of tobacco product
21 manufactured by a manufacturer, the percentage of indi-
22 viduals who are 13 through 17 years of age who have been
23 determined to have identified a brand of such tobacco
24 product of such manufacturer as the usual brand smoked

1 or used for purposes of determining the underage use
2 baseline level under subsections (a) and (b).

3 “(d) USE OF CERTAIN DATA OR METHODOLOGY.—

4 For purposes of determining the percentages under para-
5 graphs (1) through (3) of subsections (a) and (b), the Sec-
6 retary shall use the data contained in the National High
7 School Drug Use Survey entitled Monitoring the Future
8 by the University of Michigan or such other comparable
9 index, as determined appropriate by the Secretary after
10 notice and an opportunity for a hearing.

11 **“SEC. 2813. ANNUAL MONTHLY PERCENTAGE PREVALENCE**
12 **OF UNDERAGE USE OF TOBACCO PRODUCTS.**

13 “(a) ANNUAL DETERMINATION.—Not later than the
14 expiration of the 3-year period beginning on the date of
15 enactment of this title, and annually thereafter, the Sec-
16 retary shall determine the average annual percentage
17 prevalence of the monthly use of cigarettes and smokeless
18 tobacco by individuals who are under 18 years of age.

19 “(b) CIGARETTES.—With respect to cigarettes, a de-
20 termination under subsection (a) for a year shall be based
21 on the percentage, as weighted by the relative population
22 of the age groups involved as determined using data com-
23 piled in 1995 by the Bureau of the Census, of—

1 “(1) individuals who are 16 or 17 years of age
2 who used cigarettes on a monthly basis during the
3 year involved;

4 “(2) individuals who are 14 or 15 years of age
5 who used cigarettes on a monthly basis during the
6 year involved; and

7 “(3) individuals who are 13 years of age who
8 used cigarettes on a monthly basis during the year
9 involved.

10 “(c) SMOKELESS TOBACCO.—With respect to smoke-
11 less tobacco, a determination under subsection (a) for a
12 year shall be based on the percentage, as weighted by the
13 relative population of the age groups involved as deter-
14 mined using data compiled in 1995 by the Bureau of the
15 Census, of—

16 “(1) individuals who are 16 or 17 years of age
17 who used smokeless tobacco on a monthly basis dur-
18 ing the year involved;

19 “(2) individuals who are 14 or 15 years of age
20 who used smokeless tobacco on a monthly basis dur-
21 ing the year involved; and

22 “(3) individuals who are 13 years of age who
23 used smokeless tobacco on a monthly basis during
24 the year involved.

1 “(d) MANUFACTURERS’ ANNUAL MONTHLY PER-
2 CENTAGE PREVALENCE OF UNDERAGE USE OF TOBACCO
3 PRODUCTS.—For purposes of this subtitle, the term ‘man-
4 ufacturers’ annual monthly percentage prevalence of un-
5 derage use of tobacco products’ means, with respect to
6 each type of tobacco product manufactured by a manufac-
7 turer, the percentage of individuals who are 13 through
8 17 years of age who have been determined to have identi-
9 fied a brand of such tobacco product of such manufacturer
10 as the usual brand smoked or used for purposes of deter-
11 mining the underage annual monthly percentage preva-
12 lence under subsections (b) and (c).

13 “(e) USE OF CERTAIN DATA OR METHODOLOGY.—
14 For purposes of determining the percentages under para-
15 graphs (1) through (3) of subsections (b) and (c), the Sec-
16 retary shall use data contained in the National High
17 School Drug Use Survey entitled Monitoring the Future
18 by the University of Michigan (if such survey is still being
19 undertaken) or such other comparable index, as deter-
20 mined appropriate by the Secretary after notice and an
21 opportunity for a hearing.

22 **“SEC. 2814. REQUIRED PERCENTAGE REDUCTION IN UN-
23 DERAGE USE OF TOBACCO PRODUCTS.**

24 “(a) IN GENERAL.—For purposes of assessing sur-
25 charges under section 2815, the Secretary shall determine

1 whether the required percentage reduction in the underage
2 use of tobacco products for a year (based on the national
3 goals described in section 4 of the PAST Act) has been
4 achieved for the year involved. Such determination shall
5 be based on—

6 “(1) with respect to cigarettes, the average an-
7 nual percentage prevalence of the monthly use of to-
8 bacco products by individuals who are under 18
9 years of age for the year involved (as determined
10 under section 2813(b)) as compared to the underage
11 use baseline for cigarettes (as determined under sec-
12 tion 2812(a)); and

13 “(2) with respect to smokeless tobacco, the av-
14 erage annual percentage prevalence of the monthly
15 use of smokeless tobacco by individuals who are
16 under 18 years of age for the year involved (as de-
17 termined under section 2813(c)) as compared to the
18 underage use baseline level for smokeless tobacco (as
19 determined under section 2812(b)).

20 “(b) REQUIRED PERCENTAGE REDUCTION IN UN-
21 DERAGE USE OF CIGARETTES AND SMOKELESS TO-
22 BACCO.—For purposes of subsection (a), the required per-
23 centage reduction in the underage use of cigarettes and
24 smokeless tobacco with respect to each tobacco product.
25 shall be determined based on the national goals for the

1 reduction in underage tobacco use under section 4 of the
2 PAST Act.

3 “(c) APPLICATION TO MANUFACTURERS.—With re-
4 spect to the manufacturers’ annual monthly percentage
5 prevalence of underage use of tobacco products for a
6 year—

7 “(1) if the manufacturer manufactured a brand
8 or brands of tobacco products on or prior to the date
9 of enactment of this title, such manufacturer shall
10 reduce the percentage of underage individuals who
11 use such brand or brands as their usual brand in ac-
12 cordance with the percentage reductions described in
13 the national goals in section 4 of the PAST Act; and

14 “(2) if the manufacturer manufactures a brand
15 or brands of tobacco products after the date of en-
16 actment of this title, such manufacturer shall ensure
17 that the percentage of underage individuals who use
18 such brand or brands as their usual brand is equal
19 to or less than 2 percent.

20 “(d) TARGET REDUCTION LEVEL FOR A MANUFAC-
21 Turer.—For purposes of this section, the target reduc-
22 tion level for each type of tobacco product for a year for
23 a manufacturer shall equal the product of—

24 “(1) the manufacturers’ baseline level for such
25 tobacco product; and

1 “(2) an amount equal to—

2 “(A) 100; less

3 “(B) the required percentage reduction
4 under the national goals under section 4 of the
5 PAST Act for such tobacco product for such
6 year.

7 **“SEC. 2815. APPLICATION OF SURCHARGES.**

8 “(a) IN GENERAL.—If the Secretary determines that
9 the percentage reduction in the underage use of cigarettes
10 and smokeless tobacco for a manufacturer in a year has
11 not been achieved as required under section 2814, the Sec-
12 retary shall impose a surcharge on the participating man-
13 ufacturer of the tobacco product involved.

14 “(b) AMOUNT OF SURCHARGE.—

15 “(1) IN GENERAL.—

16 “(A) CIGARETTES.—With respect to ciga-
17 rettes, the amount of any surcharge to be im-
18 posed under this section for a calendar year
19 shall be equal to the product of—

20 “(i) \$80,000,000, and the number of
21 applicable surcharge percentage points as
22 determined under subsection (c) up to 5
23 percentage points;

24 “(ii) \$400,000,000, and the number
25 of applicable surcharge percentage points

1 as determined under subsection (c), if such
2 percentage points are greater than 5 but
3 less than 11 percentage points; and

4 “(iii) \$500,000,000, and the number
5 of applicable surcharge percentage points
6 as determined under subsection (c), if such
7 percentage points are 11 or more percent-
8 age points; and

9 “(B) SMOKELESS TOBACCO.—With respect
10 to smokeless tobacco, the amount of any sur-
11 charge to be imposed under this section for a
12 calendar year shall be equal to the product of—

13 “(i) \$15,000,000, and the number of
14 applicable surcharge percentage points as
15 determined under subsection (c) up to 5
16 percentage points;

17 “(ii) \$30,000,000, and the number of
18 applicable surcharge percentage points as
19 determined under subsection (c), if such
20 percentage points are greater than 5 but
21 less than 11 percentage points; and

22 “(iii) \$45,000,000, and the number of
23 applicable surcharge percentage points as
24 determined under subsection (c), if such

1 percentage points are 11 or more percent-
2 age points.

3 “(2) ADJUSTMENTS.—The amount applicable
4 under paragraph (1) shall be annually adjusted by
5 the Secretary based on the proportional percentage
6 increase or decrease, as compared to calendar year
7 1995, in the population of individuals residing in the
8 United States who are at least 13 years of age but
9 less than 18 years of age.

10 “(c) DETERMINATION OF APPLICABLE SURCHARGE
11 PERCENTAGE POINTS.—

12 “(1) IN GENERAL.—With respect to a calendar
13 year, the applicable surcharge percentage points
14 shall be equal to the percentage point difference be-
15 tween—

16 “(A) the required percentage reduction
17 goal in the underage use of the tobacco product
18 involved for the year (based on the national
19 goals described in section 4 of the PAST Act);
20 and

21 “(B) the percentage reduction in the aver-
22 age annual percentage prevalence of the month-
23 ly use of the tobacco products involved by indi-
24 viduals who are under 18 years of age for the
25 year (as determined under section 2813) com-

1 pared to the baseline level of underage use for
2 such products (as determined under section
3 2812).

4 “(2) ADJUSTMENT.—If for any calendar year
5 the Secretary determines that the average annual in-
6 cidence of the monthly use of the tobacco products
7 involved by individuals who are under 18 years of
8 age (as determined under section 2813) is greater
9 than the underage use base percentage for such
10 products (as determined under section 2812), the
11 applicable surcharge percentage point shall be equal
12 to the sum of—

13 “(A) the percentage point amount deter-
14 mined under paragraph (1)(A); and

15 “(B) the percentage increase in the aver-
16 age annual percentage prevalence of the month-
17 ly use of the tobacco products involved by indi-
18 viduals who are under 18 years of age for the
19 year(as determined under section 2813) com-
20 pared to the underage use baseline level for
21 such products (as determined under section
22 2812).

23 “(3) TYPE OF PRODUCT.—Separate determina-
24 tions shall be made under this section for cigarettes
25 and smokeless tobacco.

1 “(d) MANUFACTURER SPECIFIC PENALTY.—With re-
2 spect to each manufacturer for a year, if the Secretary
3 determines that the required percentage reduction in use
4 of a type of tobacco product has not been achieved by such
5 manufacturer, the Secretary shall impose a surcharge on
6 such manufacturer. Any surcharge under this section with
7 respect to cigarettes or smokeless tobacco shall be assessed
8 on individual participating manufacturers as allocated by
9 their relative proportion of the applicable surcharge per-
10 centage points.

11 “(e) ASSESSMENT.—Not later than May 1 of each
12 year in which a surcharge will be imposed under this sec-
13 tion, the Secretary shall assess, pursuant to subsection
14 (d), to each participating manufacturer the amount for
15 which such manufacturer is obligated. Not later than July
16 1 of any year in which a manufacturer receives an assess-
17 ment under this section, the manufacturer shall pay such
18 assessment in full or be subject to such interest on such
19 amount as the Secretary may by regulation prescribe.

20 “(f) USE OF AMOUNTS.—Amounts received under
21 this section shall be used to further the purposes of this
22 title.

23 “(g) PROHIBITION.—No stay or other injunctive re-
24 lief may be granted by the Secretary or any court that

1 has the effect of enjoining the imposition and collection
2 of the surcharges to be applied under this section.

3 **"SEC. 2816. ABATEMENT PROCEDURES.**

4 “(a) PETITIONS.—Upon payment by a participating
5 manufacturer of the amount assessed to the manufacturer
6 under section 2815(f), the manufacturer may submit a pe-
7 tition to the Secretary for an abatement of the assessment.
8 A notice of such abatement petition shall be submitted to
9 the attorney general of each State.

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

17 “(c) BURDEN.—The burden at any hearing under
18 subsection (b) shall be on the participating manufacturer
19 to prove, by a preponderance of the evidence, that the
20 manufacturer should be granted the abatement.

21 “(d) BASIS OF DECISION.—Any decision regarding a
22 petition for an abatement under this section shall be based
23 on a determination as to whether—

24 “(1) the participating manufacturer has acted
25 in good faith and in full compliance with this title

1 and any regulations or State or local laws promul-
2 gated in furtherance of this title;

3 “(2) the participating manufacturer has pur-
4 sued all reasonably available measures to attain the
5 reductions;

6 “(3) there is any evidence of any direct or indi-
7 rect action by the participating manufacturer to un-
8 dermine the achievement of the reductions required
9 under section 2814 or to undermine any other provi-
10 sion of this title; and

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

14 “(e) AMOUNT.—Upon a determination granting an
15 abatement under this section, the Secretary shall order the
16 abatement of not more than 50 percent of the amount paid
17 by the participating manufacturer (as determined by the
18 Secretary), together with interest that may have accrued
19 on such amount during the period between the date on
20 which payment by the manufacturer was made and the
21 date on which the abatement order was granted. Such in-
22 terest shall be equal to that provided for the average 52-
23 week Treasury Bill during the period involved.

24 “(f) AGGRIEVED PARTIES.—Any participating manu-
25 facturer or attorney general of any State that is aggrieved

1 by an abatement that is granted under this section may
2 seek judicial review of the abatement decision within 30
3 days of the date of such decision in the Court of Appeals
4 for the District of Columbia Circuit. Review in such cases
5 shall be subject to the procedures described in sections
6 701 through 706 of title 5, United States Code.

7 “(g) PROHIBITION.—A participating manufacturer
8 may not file a petition under subsection (a) until such time
9 as the manufacturer has fully paid the Secretary the
10 amount assessed to the manufacturer under section 2815.

11 **“SEC. 2817. INCENTIVE FOR EXCEEDING REDUCTION**
12 **GOALS.**

13 “If the Secretary determines that the percentage re-
14 duction in the underage use of tobacco products for a year
15 exceeds 60 percent for cigarettes and 45 percent for
16 smokeless tobacco for a year as required under section
17 2814, the Secretary shall adjust the amount of the fee
18 that a participating manufacturer shall be required to pay
19 for such year into the Tobacco Settlement Trust Fund.

20 **“Subtitle B—Restrictions on Access**
21 **to Tobacco Products**

22 **“SEC. 2821. MINORS’ ACCESS TO TOBACCO PRODUCTS.**

23 “(a) IN GENERAL.—To be eligible to receive funds
24 under section 2824 a State shall—

1 “(1) have in effect a law that provides that no
2 retailer may sell or otherwise distribute a tobacco
3 product within the State to any individual who is
4 under 18 years of age, and that includes the provi-
5 sions described in the model State law described in
6 section 2823;

7 “(2) except for the 1st applicable fiscal year,
8 demonstrate to the Secretary that the State has
9 achieved the compliance goals described in section
10 2822; and

11 “(3) ensure enforcement with the State law de-
12 scribed in paragraph (1) by—

13 “(A) certifying to the Secretary that the
14 State has designated a State agency with law
15 enforcement or regulatory authority to enforce
16 the State law described in paragraph (1);

17 “(B) certifying to the Secretary that the
18 enforcement of such law is treated as a priority
19 by the State and the agency designated under
20 subparagraph (A);

21 “(C) conducting random, unannounced in-
22 spections in a manner that will—

23 “(i) provide statistically significant in-
24 formation concerning the State’s level of

1 compliance with the requirements of this
2 section; and

3 “(ii) ensure compliance with the State
4 law enacted in accordance with paragraph
5 (1); and

6 “(D) annually submitting to the Secretary
7 a report that—

8 “(i) describes the activities carried out
9 by the State to enforce such law during the
10 fiscal year preceding the fiscal year for
11 which the State is seeking an allotment
12 under section 2824;

13 “(ii) describes the steps taken by the
14 State to ensure that enforcement of such
15 law was treated as a priority by State and
16 local law enforcement or regulatory au-
17 thorities;

18 “(iii) describes the level of compliance
19 among tobacco product licensees with the
20 provisions of this subtitle;

21 “(iv) describes the extent of success
22 the State has achieved in reducing the
23 availability of tobacco products to individ-
24 uals under the age of 18, including the re-

1 sults of the inspections conducted under
2 subparagraph (C);

3 “(v) describes the strategies to be uti-
4 lized by the State for enforcing such law
5 during the fiscal year for which the allot-
6 ment is sought;

7 “(vi) describes, for the preceding fis-
8 cal year, the percentage of the attempts by
9 individuals under 18 years of age to pur-
10 chase tobacco products in the State that
11 were unsuccessful; and

12 “(vii) includes any other information
13 required by the Secretary.

14 “(b) FUNDING.—The law specified in subsection
15 (a)(1) may be administered and enforced by a State
16 using—

17 “(1) funds received by the State under section
18 2824;

19 “(2) any fees collected for licenses issued pursu-
20 ant to the law described in subsection (a)(1);

21 “(3) any fines or penalties assessed for viola-
22 tions of the law specified in subsection (a)(1); or

23 “(4) any other funding source that the legisla-
24 ture of the State may prescribe by statute.

25 “(c) NONCOMPLIANCE OF STATE.—

1 “(1) IN GENERAL.—The Secretary, acting
2 through the Director of the Office on Smoking and
3 Health of the Centers for Disease Control and Pre-
4 vention, shall make a determination whether the
5 State has maintained compliance with the provisions
6 of this section and section 2822. If, after notice to
7 the State and an opportunity for a hearing, the Sec-
8 retary determines that the State is not in compliance
9 with such provisions, the Secretary shall reduce the
10 amount of the State payment under sections 2824,
11 2832, and 2842 for the fiscal year involved by an
12 amount equal to—

13 “(A) in the case of the first fiscal year
14 during which the State is not in compliance
15 with the provisions of section 2822, 10 percent
16 of the amount determined under section 2824,
17 2832, and 2842;

18 “(B) in the case of the second consecutive
19 fiscal year during which the State is not in
20 compliance with the provisions of section 2822,
21 20 percent of the amount determined under
22 such sections for the State for the fiscal year;
23 and

24 “(C) in the case of the third consecutive
25 fiscal year during which the State is not in

1 compliance with the provisions of section 2822,
2 30 percent of the amount determined under
3 such sections for the State for the fiscal year.

4 “(2) ELIGIBILITY FOR PAYMENTS.—In the case
5 of the fourth consecutive year (or any subsequent
6 consecutive year) during which the State is not in
7 compliance with sections 2821 and 2822, the State
8 shall not be eligible for payments under section
9 2824.

10 “(d) ACTION BY SECRETARY.—If the Secretary de-
11 termines that a State is not eligible for payments under
12 section 2824, the Secretary, acting through the Office on
13 Smoking and Health, shall take such actions under section
14 2821 to ensure compliance with this subtitle in the State.

15 “(e) DELAYED APPLICABILITY FOR CERTAIN
16 STATES.—In the case of a State whose legislature does
17 not convene a regular session in fiscal year 2000, the re-
18 quirement described in subsection (a) shall apply only for
19 fiscal year 2001 and subsequent fiscal years.

20 “(f) DEFINITIONS.—

21 “(1) FIRST APPLICABLE FISCAL YEAR.—For
22 purposes of this section, the term ‘first applicable
23 fiscal year’ means—

24 “(A) fiscal year 2001, in the case of any
25 State described in subsection (e); and

1 “(B) fiscal year 2000, in the case of any
2 other State.

3 “(2) TOBACCO PRODUCT.—The term ‘tobacco
4 product’ means cigarettes, smokeless tobacco, cigars,
5 and pipe tobacco.

6 **“SEC. 2822. COMPLIANCE GOALS.**

7 “The following compliance goals shall apply for a fis-
8 cal year with respect to a State under this subtitle:

9 “(1) In the case of the first applicable fiscal
10 year (as defined in section 2821(f)), fewer than 20
11 percent of all individual under 18 years of age who
12 attempted to purchase tobacco products in the State
13 were successful in such purchase.

14 “(2) In the case of the first fiscal year following
15 the first applicable fiscal year (as defined in section
16 2821(f)), fewer than 15 percent of all individual
17 under 18 years of age who attempted to purchase to-
18 bacco products in the State were successful in such
19 purchase.

20 “(3) In the case of the second fiscal year follow-
21 ing the first applicable fiscal year (as defined in sec-
22 tion 2821(f)), fewer than 10 percent of all individual
23 under 18 years of age who attempted to purchase to-
24 bacco products in the State were successful in such
25 purchase.

1 “(4) In the case of the third fiscal year follow-
2 ing the first applicable fiscal year (as defined in sec-
3 tion 2821(f)), and each subsequent fiscal year, fewer
4 than 5 percent of all individual under 18 years of
5 age who attempted to purchase tobacco products in
6 the State were successful in such purchase.

7 **“SEC. 2823. MODEL STATE LAW.**

8 “The model State law described in this section with
9 respect to a State is the following;

10 **“SECTION 1. ESTABLISHMENT OF PROGRAM.**

11 ““There is established within the State a program
12 under which a person is required to obtain a State or local
13 license (referred to in this Act as the “licensee”) to sell
14 or otherwise distribute tobacco products directly to con-
15 sumers.

16 **“SEC. 2. PROHIBITION ON SALE OR DISTRIBUTION OF TO-**
17 **BACCO PRODUCTS TO MINORS.**

18 ““No person (including a licensee) may sell or other-
19 wise distribute a tobacco product to an individual who is
20 under 18 years of age.

21 **“SEC. 3. REQUIREMENTS FOR DISTRIBUTION.**

22 ““(a) IN GENERAL.—No person shall sell or other-
23 wise distribute tobacco products directly to consumers un-
24 less such person has in effect a tobacco license issued or

1 renewed in accordance with the laws of the State in which
2 the products are to be sold or distributed.

3 “(b) PHOTO IDENTIFICATION.—

4 “(1) REQUIREMENT.—Except as provided in
5 paragraph (2), each licensee shall verify, by means
6 of a driver’s license or other form of identification
7 issued by a government authority containing a pho-
8 tograph and the date of birth of the bearer, that no
9 individual purchasing a tobacco product is under 18
10 years of age.

11 “(2) EXCEPTION.—No verification under para-
12 graph (1) is required for any individual who is at
13 least 27 years of age.

14 “(c) LOCATION OF PRODUCTS.—A licensee shall en-
15 sure that all tobacco products are located in areas where
16 customers do not have access to the products.

17 “(d) FACE-TO-FACE TRANSACTIONS.—A licensee
18 may sell tobacco products only in a direct, face-to-face ex-
19 change without the assistance of any electronic or mechan-
20 ical device.

21 “(e) OUT-OF-PACKAGE DISTRIBUTION.—No licensee
22 may break or otherwise open a tobacco product to sell or
23 distribute to individuals portions of such product (includ-
24 ing individual cigarettes or a number of cigarettes that
25 is smaller than the quantity in the minimum package size,

1 or any quantity of cigarette tobacco or smokeless tobacco
2 that is smaller than the smallest package distributed by
3 the licensee for individual consumer use).

4 ““(f) LICENSEE COMPLIANCE WITH RESPECT TO
5 SELF-SERVICE.—Each licensee shall ensure that all to-
6 bacco-related advertising, labeling, and other items that
7 are located in the establishment of the licensee and that
8 do not comply with the requirements of this section are
9 removed or are brought into compliance with the require-
10 ments of this section.

11 ““(g) MINIMUM CIGARETTE PACKAGE SIZE.—Except
12 as otherwise provided in this section, no manufacturer,
13 distributor, or licensee may sell or cause to be sold, or
14 distribute or cause to be distributed, any cigarette package
15 that contains fewer than 20 cigarettes.

16 ““(h) PROHIBITION ON SAMPLING.—No manufac-
17 turer, distributor, or licensee may distribute or cause to
18 be distributed any free samples of any tobacco product.

19 “SEC. 4. LICENSING REQUIREMENTS.

20 ““(a) LICENSURE AND NOTICE.—

21 ““(1) LICENSURE.—Every person engaged in
22 the sale or distribution of tobacco products directly
23 to consumers shall obtain a license that is issued by
24 the State. A separate license shall be required for

1 each place of business where tobacco products are
2 distributed or sold at retail.

3 ““(2) NOTICE.—The State shall provide notice
4 to every person who is engaged in the distribution
5 at retail of tobacco products of the licensing require-
6 ments of paragraph (1) and of the date by which
7 such person shall be required to obtain such a li-
8 cense in order to distribute such products.

9 ““(b) FEE.—Each person that desires to obtain a li-
10 cense under subsection (a) shall be assessed an annual li-
11 censing fee in an amount determined appropriate by the
12 State. Such fees shall be used to administer the provisions
13 of this Act with respect to the issuing and renewing of
14 licenses, and enforcement of the youth access restrictions
15 of the State.

16 ““(c) APPLICATION.—

17 ““(1) IN GENERAL.—To be eligible to receive a
18 license (or the renewal of a license) under this sec-
19 tion, a person shall prepare and submit to the State
20 an application, in such form as may be required by
21 the State, that shall contain—

22 ““(A) the name under which the applicant
23 transacts or intends to transact business;

24 ““(B) the location of the place of business
25 for which the license is to be issued;

1 “(C) the street address to which all no-
2 tices relevant to the license are to be sent; and

3 “(D) any other information determined
4 appropriate by the State.

5 “(2) ACTION BY STATE.—

6 “(A) IN GENERAL.—Not later than 30
7 days after the date on which a completed appli-
8 cation (and licensing fee) under paragraph (1)
9 is received, the State shall approve or deny the
10 application.

11 “(B) FINDING BY STATE.—The State
12 shall deny an application under paragraph (1)
13 if the State determines that the applicant has
14 failed to comply with the requirements of this
15 Act.

16 “(3) SCOPE AND RENEWAL.—A license under
17 this section shall be valid for a period of time deter-
18 mined appropriate by the State and shall be renewed
19 upon proper application except as otherwise provided
20 in this section.

21 **“SEC. 5. PENALTIES FOR LICENSEES AND EMPLOYEES FOR**
22 **SALE OR DISTRIBUTION IN VIOLATION OF**
23 **LAW.**

24 “(a) CRIMINAL PENALTIES APPLICABLE TO UNLI-
25 CENSED SELLERS.—The owner of any retail establish-

1 ment that sells or otherwise distributes tobacco products
2 to a consumer in the State without a tobacco license shall
3 be subject to a fine of not less than \$500 per outlet, or
4 imprisonment of not less than 30 days, or both.

5 ““(b) CIVIL PENALTIES APPLICABLE TO LICENSED
6 PERSONS.—

7 ““(1) IN GENERAL.—The State may impose
8 civil penalties on any person that has sold or other-
9 wise distributed tobacco products in violation of the
10 tobacco license of the person or in violation of this
11 Act.

12 ““(2) LIMITATIONS.—The civil penalties im-
13 posed under paragraph (1), subject to the provisions
14 of subparagraph (d), shall not be less than the fol-
15 lowing:

16 ““(A) For the first offense within any 2-
17 year period, \$100.

18 ““(B) For a second offense within any 2-
19 year period, \$250.

20 ““(C) For a third offense within any 2-
21 year period, \$250, and a 3-day suspension of
22 the tobacco license.

23 ““(D) For a fourth offense within any 2-
24 year period, \$500 and a 7-day suspension of the
25 tobacco license.

1 “(E) For a fifth offense within any 2-year
2 period, \$500, and a 30-day suspension of the
3 tobacco license.

4 “(F) For a sixth offense within any 2-
5 year period, \$10,000, or a 1-year suspension of
6 the tobacco license, or both.

7 “(G) For a seventh and any subsequent
8 offense within any 2-year period, \$10,000, or a
9 3-year revocation of the tobacco license.

10 “(H) For a tenth offense within any 2-
11 year period, the mandatory revocation of the to-
12 bacco license with no possibility of reinstate-
13 ment for a period of 5 years.

14 “(3) DEFENSES.—It shall be a defense to a
15 charge brought under paragraph (1) that the de-
16 fendant relied upon proof of age that appeared on
17 its face to be valid.

18 “(4) CONSIDERATION.—It shall be a consider-
19 ation to a charge brought under paragraph (1) that
20 the defendant has complied with the requirements of
21 section 9.

22 “(5) OTHER VIOLATIONS.—No civil penalties
23 shall be imposed under this subsection upon a li-
24 censee with respect to a violation, by an employee of
25 the licensee, that occurred at a place of business of

1 the employer subsequent to the occurrence of a prior
2 violation by that same employee unless the licensee
3 has received notice of such prior violation in writing,
4 served personally or by registered mail at the ad-
5 dress to which all notices relevant to the license are
6 to be sent.

7 ““(c) CIVIL PENALTIES APPLICABLE TO EMPLOYEES
8 OF LICENSED PERSONS.—

9 ““(1) IN GENERAL.—The State may impose
10 civil penalties on any employee of a person with a
11 tobacco license who has sold or otherwise distributed
12 tobacco products in violation of this Act.

13 ““(2) LIMITATIONS.—The civil penalties im-
14 posed under paragraph (1) shall not be less than the
15 following:

16 ““(A) For the first offense within any 2-
17 year period, \$25.

18 ““(B) For a second offense within any 2-
19 year period, \$75.

20 ““(C) For a third and any subsequent of-
21 fense within any 2-year period, \$150.

22 ““(3) DEFENSES.—It shall be a defense to a
23 charge brought under paragraph (1) that the de-
24 pendent relied upon proof of age that appeared on
25 its face to be valid.

1 “(d) SUSPENSION OR REVOCATION OF LICENSE.—

2 “(1) NOTICE.—Upon a finding that a violation
3 of section 3(b)(1) has occurred for which the State
4 may suspend or revoke the tobacco license involved
5 the State shall, prior to any such suspension or rev-
6 ocation, notify the licensee in writing, personally or
7 by registered mail, at the address to which all no-
8 tices are to be sent that the State is considering
9 such suspension or revocation.

10 “(2) OPPORTUNITY TO BE HEARD.—Within 30
11 days of the date on which a licensee receives a notice
12 under paragraph (1), the State shall give the li-
13 censee an opportunity to show why, based upon the
14 licensee’s efforts to assure compliance with such sec-
15 tion, the suspension or revocation of the license
16 would be unwarranted and unjust. The State shall
17 take into consideration any information provided by
18 the licensee prior to suspending or revoking such li-
19 cense.

20 “(3) WAIVER.—If a licensee demonstrates that
21 it has made appropriate good faith efforts to assure
22 compliance with section 3(b)(1), the State may waive
23 the penalty of suspension or revocation.

1 **“SEC. 6. PURCHASE, RECEIPT, OR POSSESSION BY MINORS**
2 **PROHIBITED.**

3 “(a) IN GENERAL.—An individual under 18 years
4 of age shall not purchase or attempt to purchase, receive
5 or attempt to receive, possess, smoke, or otherwise use or
6 consume a tobacco product in a public place.

7 “(b) PENALTIES TO MINORS.—A minor found to be
8 in violation of subsection (a) shall incur a written warning
9 and may incur—

10 “(1) a civil money penalty of not less than \$25
11 and not more than \$150 for each violation;

12 “(2) the suspension of his or her motor vehicle
13 operator’s license; or

14 “(3) any other civil penalty determined appro-
15 priate by the State.

16 “(c) NOTICE.—A law enforcement agency, upon de-
17 termining that an individual under 18 years of age alleg-
18 edly violated subsection (a) shall notify the individual’s
19 parent or parents, custodian, or guardian as to the nature
20 of the violation if the name and address of a parent,
21 guardian, or custodian is reasonably ascertainable by the
22 law enforcement agency. The notice required by this sub-
23 section shall be made not later than 48 hours after the
24 individual who allegedly violated subsection (a) is cited by
25 such agency for the violation. The notice may be made
26 by any means reasonably calculated to give prompt actual

1 notice, including notice in person, by telephone, or by first-
2 class mail.

3 ““(d) EMPLOYMENT.—Subsection (a) does not pro-
4 hibit an individual under the age of 18 from possessing
5 or receiving a tobacco product during regular working
6 hours and in the course of such individual’s employment
7 if the tobacco product is not possessed for such individ-
8 ual’s consumption.

9 “SEC. 7. ENFORCEMENT.

10 ““(a) RANDOM UNANNOUNCED INSPECTIONS.—The
11 State shall establish procedures to ensure compliance with
12 this Act. Such procedures shall consist of random, unan-
13 nounced inspections of establishments that are licensed to
14 sell tobacco in a fashion that is designed to achieve data
15 that is of statistical significance, and shall engage an indi-
16 vidual under 18 years of age to test compliance with this
17 Act.

18 ““(b) ENFORCEMENT AUTHORITY.—The State shall
19 designate an agency within the State with law enforcement
20 or regulatory authority to enforce this Act.

21 ““(c) USE OF PENALTIES AND FEES.—Penalties and
22 fees collected under this Act shall be used to defray the
23 costs of the State in administering and enforcing this Act.

1 **“SEC. 8. SIGNAGE.**

2 **“‘It shall be unlawful for any licensee who sells to-**
3 bacco products to fail to post conspicuously a sign commu-
4 nicating that—

5 **“‘(1) the sale of tobacco products to individuals**
6 under the age of 18 is prohibited by law,

7 **“‘(2) the purchase of tobacco products by indi-**
8 viduals under the age of 18 is prohibited by law, and

9 **“‘(3) proof of age will be demanded of individ-**
10 uals under 27 years of age.

11 A licensee who fails to post a sign in violation of this sec-
12 tion is liable for a civil money penalty of \$500.

13 **“SEC. 9. NOTIFICATION OF EMPLOYEES.**

14 **“‘(a) NOTICE TO EMPLOYEES.—**Within 90 days of
15 the effective date of this Act, every licensee engaged in
16 the business of distributing tobacco products at retail shall
17 implement a program to notify each employee employed
18 by that licensee who distributes tobacco products that this
19 Act—

20 **“‘(1) prohibits the distribution of tobacco prod-**
21 ucts to any individual under 18 years of age and the
22 purchase, receipt, possession, smoking, or other use
23 or consumption of tobacco products by any individ-
24 ual under 18 years of age, and

25 **“‘(2) prohibits out-of-package distribution of**
26 cigarettes and smokeless tobacco.

1 “(b) STATEMENT.—It shall be a defense to a charge
2 that an employer or licensee violated subsection (a) of this
3 section that the employee acknowledged in writing receipt
4 of a statement in substantially the following form:

5 “““I understand that State law prohibits the dis-
6 tribution of tobacco products to individuals under 18
7 years of age and out-of-package distribution of ciga-
8 rettes and smokeless tobacco and permits a defense
9 based on evidence that a recipient’s proof of age was
10 reasonably relied upon and appeared on its face to
11 be valid. I understand that if I sell, give, or volun-
12 tarily provide tobacco products to an individual
13 under the age of 18, I may be found responsible for
14 a civil money penalty for each violation. I promise to
15 comply with this Act.”.

16 “(c) VICARIOUS LIABILITY.—If an employer or li-
17 censee is charged with a violation of subsection (a) and
18 the employer uses as a defense to such charge the defense
19 provided by subsection (b), the employer shall be deemed
20 to be liable for such violation if such employer pays the
21 penalty imposed on the employee involved in such violation
22 or in any way reimburses the employee for such penalty.

1 **“SEC. 10. PENALTY FOR SALE OR DISTRIBUTION OF TO-**
2 **BACCO PRODUCTS WITHOUT A LICENSE.**

3 “(a) IN GENERAL.—Any person who engages in the
4 distribution at retail of tobacco products without a license
5 required by this Act is liable for a civil money penalty in
6 an amount equal to 2 times the applicable license fee and
7 \$250 for each day on which such distribution continues
8 without a license.

9 “(b) SUSPENSION OR REVOCATION.—Any person
10 who engages in the distribution at retail of tobacco prod-
11 ucts after a license issued under this Act has been sus-
12 pended or revoked is liable for a civil money penalty of
13 \$500 per day for each day on which such distribution con-
14 tinues after the date such person received notice of such
15 suspension or revocation.

16 **“SEC. 11. EFFECTIVE DATE.**

17 “‘No person shall engage in the distribution at retail
18 of tobacco products on or after 180 days after the date
19 of enactment of this Act unless the person is authorized
20 to do so by a license issued pursuant to this section or
21 is an employee or agent of a person who has been issued
22 such a license.’.

23 **“SEC. 2824. FUNDING.**

24 “(a) IN GENERAL.—There shall be made available
25 from the Tobacco Settlement Trust Fund to carry out this

1 subtitle \$80,000,000 for each of the fiscal years 1999
2 through 2008.

3 “(b) ENFORCEMENT.—Not more than 10 percent of
4 the amount available for any fiscal year under subsection
5 (a) shall be made available to the Secretary to carry out
6 enforcement activities under section 2826

7 “(c) ALLOTMENT TO STATES.—From the amount
8 made available under subsection (a) for any fiscal year,
9 and remaining available after amounts are made available
10 under subsection (b), the Secretary shall allot to each
11 State the applicable percentage of such available amount
12 in accordance with the following table:

State	Applicable Percentage
Alabama	1.238619
Alaska	0.500000
Arizona	1.134776
Arkansas	0.732229
California	8.585426
Colorado	1.027658
Connecticut	1.557000
Delaware	0.500000
District of Columbia	0.521120
Florida	3.500870
Georgia	1.956917
Hawaii	0.626458
Idaho	0.500000
Illinois	4.166040
Indiana	1.671714
Iowa	0.739712
Kansas	0.743167
Kentucky	1.828537
Louisiana	1.868947
Maine	0.848964
Maryland	2.000535
Massachusetts	3.607905
Michigan	4.320991
Minnesota	2.412484
Mississippi	0.830156
Missouri	1.617624
Montana	0.500000
Nebraska	0.500000
Nevada	0.500000

New Hampshire	0.538242
New Jersey	3.406803
New Mexico	0.500000
New York	14.166024
North Carolina	2.045166
North Dakota	0.500000
Ohio	4.572863
Oklahoma	0.820915
Oregon	1.065587
Pennsylvania	5.102394
Rhode Island	0.801176
South Carolina	0.861529
South Dakota	0.500000
Tennessee	2.417855
Texas	4.340060
Utah	0.500000
Vermont	0.500000
Virginia	1.339502
Washington	1.749731
West Virginia	0.978560
Wisconsin	2.046211
Wyoming	0.500000
American Samoa	0.008463
N. Mariana Islands	0.001481
Guam	0.006343
U.S. Virgin Islands	0.004683
Puerto Rico	0.188344

1 **"SEC. 2825. TOBACCO PRODUCT MARKETING RESTRIC-**
2 **TIONS.**

3 “(a) IN GENERAL.—The Secretary, acting through
4 the Office of Smoking and Health of the Centers for Dis-
5 ease Control and Prevention, shall by regulation imple-
6 ment the prohibitions described in this section concerning
7 the marketing of tobacco products to minors.

8 “(b) SALES TO MINORS PROHIBITED.—No retailer
9 may distribute a tobacco product to any individual who
10 is under 18 years of age.

11 “(c) PHOTO IDENTIFICATION.—

12 “(1) REQUIREMENT.—Except as provided in
13 paragraph (2), each retailer shall verify, by means of

1 a driver's license or other form of identification is-
2 sued by a government authority containing the date
3 of birth of the bearer, that no individual purchasing
4 a tobacco product is under 18 years of age.

5 “(2) EXCEPTION.—No verification under para-
6 graph (1) is required for any individual who is at
7 least 27 years of age.

8 “(d) LOCATION OF PRODUCTS.—Except as provided
9 in subsection (k), a retailer shall ensure that all tobacco
10 products are located in areas where customers do not have
11 access to the products.

12 “(e) FACE-TO-FACE TRANSACTIONS.—Except as pro-
13 vided in subsection (j)(1), a retailer may sell tobacco prod-
14 ucts only in a direct, face-to-face exchange without the as-
15 sistance of any electronic or mechanical device.

16 “(f) OUT-OF-PACKAGE DISTRIBUTION.—No retailer
17 may break or otherwise open a tobacco product to sell or
18 distribute to individuals portions of such product (includ-
19 ing individual cigarettes or a number of cigarettes that
20 is smaller than the quantity in the minimum package size,
21 or any quantity of cigarette tobacco or smokeless tobacco
22 that is smaller than the smallest package distributed by
23 the retailer for individual consumer use).

24 “(g) RETAILER COMPLIANCE WITH RESPECT TO
25 SELF-SERVICE.—Each retailer shall ensure that all to-

1 bacco-related advertising, labeling, and other items that
2 are located in the establishment of the retailer and that
3 do not comply with the requirements of this section are
4 removed or are brought into compliance with the require-
5 ments of this section.

6 “(h) MINIMUM CIGARETTE PACKAGE SIZE.—Except
7 as otherwise provided in this section, no manufacturer,
8 distributor, or retailer may sell or cause to be sold, or dis-
9 tribute or cause to be distributed, any cigarette package
10 that contains fewer than 20 cigarettes.

11 “(i) PROHIBITION ON SAMPLING.—No manufacturer,
12 distributor, or retailer may distribute or cause to be dis-
13 tributed any free samples of any tobacco product.

14 “(j) PROHIBITION ON DISTRIBUTION THROUGH
15 SELF-SERVICE MODES OF SALE.—Except as provided in
16 subsection (k)(1)(B), no manufacturer, distributor, or re-
17 tailer may distribute or cause to be distributed any to-
18 bacco product through a vending machine.

19 “(k) PERMITTED SELF-SERVICE MODES OF SALE.—

20 “(1) IN GENERAL.—Notwithstanding any other
21 provision of this section, the following methods of
22 distributing tobacco products are permitted:

23 “(A) Mail-order sales as provided for in
24 paragraph (2), except that mail-order redemp-

tion of coupons and the distribution of free samples through the mail shall be prohibited.

“(B) Distribution through vending machines that are located in facilities where the retailer ensures that no individuals under 18 years of age are present or permitted to enter at any time.

“(2) MAIL-ORDER SALES.—

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

“(B) REVIEW BY SECRETARY.—Not later than 2 years after the date of enactment of this section, the Secretary shall review the verification procedures implemented under subparagraph (A) to determine whether individuals under 18 years of age are obtaining tobacco products through the mail. If the Secretary determines that a significant number of underage individuals are obtaining such products through the mail, the Secretary may promulgate regulations in accordance with section 902 to prohibit

1 the distribution of tobacco products through the
2 mail.

3 **"SEC. 2826. PENALTIES.**

4 "(a) IN GENERAL.—Any tobacco product manufac-
5 turer, distributor or retailer who violates a provision of
6 section 2821 or 2825 shall be imprisoned for not more
7 than 1 year or fined not more than \$1,000, or both.

8 "(b) SUBSEQUENT VIOLATIONS.—Notwithstanding
9 the provisions of subsection (a), if any person commits a
10 violation described in subsection (a) after a conviction of
11 such person under this section has become final, or com-
12 mits such a violation with the intent to defraud or mislead,
13 such person shall be imprisoned for not more than 3 years
14 or fined not more than \$10,000, or both.

15 **"SEC. 2828. REGULATIONS.**

16 "(a) IN GENERAL.—Not later than 12 months after
17 the date of enactment of this title, the Secretary, acting
18 through the Office on Smoking and Health of the Centers
19 for Disease Control and Prevention, shall promulgate reg-
20 ulations to implement this subtitle.

21 "(b) TECHNICAL STATEMENT OF AUTHORITY.—The
22 regulations describing the general provisions and the pro-
23 hibitions on sale and distribution to persons younger than
24 18 years of age promulgated by the Secretary in the rule
25 dated August 28, 1996, adding subparts A and B of part

1 897 to title 21, Code of Federal Regulations, shall be
2 deemed to have been promulgated under the this title.

3 **“Subtitle C—State and Community**
4 **Action Program**

5 **“SEC. 2831. FUNDING FROM TOBACCO SETTLEMENT TRUST**
6 **FUND.**

7 “(a) IN GENERAL.—There shall be made available
8 from the Tobacco Settlement Trust Fund to carry out this
9 subtitle—

10 “(1) \$535,000,000 for fiscal year 1999;

11 “(2) \$572,000,000 for fiscal year 2000;

12 “(3) \$585,000,000 for fiscal year 2001;

13 “(4) \$620,000,000 for fiscal year 2002;

14 “(5) \$740,000,000 for each of the fiscal years
15 2003 through 2007; and

16 “(6) \$795,000,000 for fiscal year 2008.

17 “(b) LIMITATION.—Not more than 10 percent of the
18 amount made available for any fiscal year under sub-
19 section (a) shall be made available to the Secretary to
20 carry out activities under section 2832(c).

21 “(c) SUNSET PROVISION.—This subtitle shall termi-
22 nate on September 30, 2009.

23 **“SEC. 2832. ALLOTMENTS.**

24 “(a) IN GENERAL.—From the amount made avail-
25 able under section 2831 for any fiscal year, and remaining

1 after amounts are made available under subsection (b) of
 2 such section, the Secretary, acting through the Director
 3 of the Office on Smoking and Health of the Centers for
 4 Disease Control and Prevention (referred to in this sub-
 5 title as the 'Director'), shall allot to each State the appli-
 6 cable percentage of such remaining amount in accordance
 7 with the following table:

State	Applicable Percentage
Alabama	1.238619
Alaska	0.500000
Arizona	1.134776
Arkansas	0.732229
California	8.585426
Colorado	1.027658
Connecticut	1.557000
Delaware	0.500000
District of Columbia	0.521120
Florida	3.500870
Georgia	1.956917
Hawaii	0.626458
Idaho	0.500000
Illinois	4.166040
Indiana	1.671714
Iowa	0.739712
Kansas	0.743167
Kentucky	1.828537
Louisiana	1.868947
Maine	0.848964
Maryland	2.000535
Massachusetts	3.607905
Michigan	4.320991
Minnesota	2.412484
Mississippi	0.830156
Missouri	1.617624
Montana	0.500000
Nebraska	0.500000
Nevada	0.500000
New Hampshire	0.538242
New Jersey	3.406803
New Mexico	0.500000
New York	14.166024
North Carolina	2.045166
North Dakota	0.500000
Ohio	4.572863
Oklahoma	0.820915
Oregon	1.065587
Pennsylvania	5.102394
Rhode Island	0.801176

South Carolina	0.861529
South Dakota	0.500000
Tennessee	2.417855
Texas	4.340060
Utah	0.500000
Vermont	0.500000
Virginia	1.339502
Washington	1.749731
West Virginia	0.978560
Wisconsin	2.046211
Wyoming	0.500000
American Samoa	0.008463
N. Mariana Islands	0.001481
Guam	0.006343
U.S. Virgin Islands	0.004683
Puerto Rico	0.188344

1 “(b) REALLOTMENT.—To the extent that amounts
2 made available under section 2831 for a fiscal year are
3 not otherwise allotted to States because—

4 “(1) 1 or more States have not submitted an
5 application or description of activities in accordance
6 with section 2836 for the fiscal year;

7 “(2) 1 or more States have notified the Sec-
8 retary that they do not intend to use the full amount
9 of their allotment; or

10 “(3) the Secretary has determined that the
11 State is not in compliance with this title, and there-
12 fore is subject to penalties under section 2838;
13 such excess amount shall be reallocated among each of the
14 remaining States in proportion to the amount otherwise
15 allotted to such States for the fiscal year involved without
16 regard to this subsection.

17 “(c) ALLOCATION FOR TECHNICAL ASSISTANCE,
18 DATA COLLECTION, AND PROGRAM EVALUATION.—

1 “(1) IN GENERAL.—To carry out this sub-
2 section and section 2834, the Secretary shall obli-
3 gate not more than 10 percent of the amount made
4 available for any fiscal year under section 2831.

5 “(2) DATA COLLECTION.—Amounts made avail-
6 able under this subsection may be used to carry out
7 section 2837.

8 “(3) PROGRAM EVALUATION.—Amounts made
9 available under this subsection may be used to con-
10 duct evaluations of State and community action pro-
11 grams to determine methods for improving the qual-
12 ity of such programs.

13 “(d) REGULATIONS.—Not later than 18 months after
14 the date of enactment of this title, the Secretary shall pro-
15 mulgate regulations to implement this subtitle. This sub-
16 title shall take effect regardless of the date on which such
17 regulations are promulgated.

18 **“SEC. 2833. PAYMENTS UNDER ALLOTMENTS TO STATES.**

19 “(a) IN GENERAL.—The Secretary shall make pay-
20 ments to States under allotments under this subtitle as
21 provided for under section 203 of the Intergovernmental
22 Cooperation Act of 1968.

23 “(b) AVAILABILITY OF FUNDS.—Any amount paid to
24 a State for a fiscal year under this subtitle and remaining
25 unobligated at the end of such year shall remain available

1 to such State for the next fiscal year for the purposes for
2 which such payment was made.

3 **"SEC. 2834. TECHNICAL ASSISTANCE AND PROVISION OF**
4 **SUPPLIES AND SERVICES IN LIEU OF FUNDS.**

5 “(a) TECHNICAL ASSISTANCE.—The Secretary shall,
6 without charge to a State receiving an allotment under
7 section 2832, provide to such State (or to any public or
8 nonprofit private entity within the State) technical assist-
9 ance and training with respect to the planning, develop-
10 ment, and operation of any program or service carried out
11 pursuant to the program involved. The Secretary may pro-
12 vide such technical assistance or training directly, through
13 contract, or through grants.

14 “(b) PROVISION OF SUPPLIES AND SERVICE IN LIEU
15 OF GRANT FUNDS.—The Secretary, at the request of a
16 State, may reduce the amount of payments to the State
17 under section 2833 by—

18 “(1) the fair market value of any supplies or
19 equipment furnished by the Secretary to the State;
20 and

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

1 when the furnishing of such supplies or equipment or the
2 detail of such an officer or employee is for the convenience
3 of and at the request of the State and for the purpose
4 of conducting activities described in section 2835. The
5 amount by which any payment is so reduced shall be avail-
6 able for payment by the Secretary of the costs incurred
7 in furnishing the supplies or equipment or in detailing the
8 personnel, on which reduction of the payment is based,
9 and the amount shall be deemed to be part of the payment
10 and shall be deemed to have been paid to the State.

11 **"SEC. 2835. USE OF ALLOTMENTS.**

12 “(a) STATE AND COMMUNITY ACTION ACTIVITIES.—

13 “(1) IN GENERAL.—Except as provided in sub-
14 sections (b) and (c), amounts paid to a State under
15 section 2833 may be used for the following:

16 “(A) Evidence-based activities for tobacco
17 use prevention and control described in the plan
18 of the State, submitted in accordance with sec-
19 tion 2835, including—

20 “(i) State and community initiatives;

21 “(ii) infrastructure development mod-
22 eled after the National Cancer Institute’s
23 ASSIST program, or another evidence-
24 based model approved by the Director;

1 “(iii) the development of effective
2 counter advertising;

3 “(iv) the development and implemen-
4 tation of anti-tobacco public health and
5 health promotion campaigns and public
6 policy initiatives; and

7 “(v) evidence-based school programs
8 to prevent and reduce tobacco use and ad-
9 diction, developed scientifically and ap-
10 proved by the Director.

11 “(vi) Initiatives targeted towards mi-
12 nority and low-income individuals residing
13 in medically underserved areas which are
14 culturally and linguistically appropriate for
15 such individuals.

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

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

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

4 “(2) COORDINATION.—State and community
5 action activities permitted under paragraph (1) may
6 be conducted in coordination with other Federally
7 funded programs including—

8 “(A) the special supplemental food pro-
9 gram under section 17 of the Child Nutrition
10 Act of 1966 (42 U.S.C. 1786);

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

14 “(C) the State Children’s Health Insur-
15 ance Program of the State under title XXI of
16 the Social Security Act (42 U.S.C. 13397aa et
17 seq.);

18 “(D) a Head Start program under the
19 Head Start Act (42 U.S.C. 9801 et seq.);

20 “(E) the school lunch program under the
21 National School Lunch Act (42 U.S.C. 1751 et
22 seq.);

23 “(F) an Indian Health Service Program;

1 “(G) the community health center program
2 under section 330 of the Public Health Service
3 Act (42 U.S.C. 254b);

4 “(H) State-initiated smoking cessation
5 programs that include provisions for reimburs-
6 ing individuals for medications or other thera-
7 peutic techniques;

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

13 “(J) The medicaid program under title
14 XIX of the Social Security Act (42 U.S.C. 1396
15 et seq.); and

16 “(K) Programs administered by the De-
17 partment of Veterans Affairs.

18 “(b) LIMITATION.—A State may not use amounts
19 paid to the State under section 2833 to—

20 “(1) purchase or improve land, purchase, con-
21 struct, or permanently improve (other than minor
22 remodeling) any building or other facility, or pur-
23 chase major medical equipment;

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

4 “(3) provide financial assistance to any entity
5 other than a public or nonprofit private entity; or

6 “(4) fund educational, recreational, or health
7 activities not based on scientific evidence that the
8 activity will prevent smoking or lead to success of
9 cessation efforts.

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

13 “(c) ADMINISTRATION.—Not more than 10 percent
14 of the allotment of a State for a the fiscal year under this
15 subtitle may be used by the State to administer the funds
16 paid to the State under section 2833. The State shall pay
17 from non-Federal sources the remaining costs of admin-
18 istering such funds.

19 **“SEC. 2836. APPLICATION FOR PAYMENTS; STATE PLAN.**

20 “(a) IN GENERAL.—The Secretary may make pay-
21 ments under section 2833 to a State for a fiscal year only
22 if—

23 “(1) the State submits to the Secretary an ap-
24 plication for such payments;

1 “(2) the application contains a State plan in ac-
2 cordance with subsection (b);

3 “(3) the application contains the certification
4 described in subsection (c);

5 “(4) the application contains such assurances
6 as the Secretary may require regarding the compli-
7 ance of the State with the requirements of this sub-
8 title (including assurances regarding compliance
9 with the agreements described in subsection (c));
10 and

11 “(5) the application is in such form and is sub-
12 mitted by such date as the Secretary may require.

13 “(b) STATE PLAN.—A State plan required under
14 subsection (a)(2) for a fiscal year is in accordance with
15 this subsection if the plan meets the following conditions:

16 “(1) The plan is developed by the State agency
17 with principal responsibility for public health pro-
18 grams, in consultation with the advisory committee
19 established pursuant to subsection (c)(2).

20 “(2) The plan specifies the activities authorized
21 under section 2834 that are to be carried out with
22 payments made to the State under section 2833.

23 “(3) The plan specifies the amount of such pay-
24 ments to be expended for each of such activities and

1 includes a description of the programs and projects
2 to be carried out.

3 “(4) The plan describes the measurable objec-
4 tives, developed in consultation with the Secretary,
5 that will be used to evaluate program outcomes.

6 “(c) STATE CERTIFICATION.—The certification re-
7 ferred to in subsection (a)(3) for a fiscal year is a certifi-
8 cation to the Secretary by the chief executive officer of
9 the State involved as follows:

10 “(1)(A) In the development of the State plan
11 required in subsection (a)(2)—

12 “(i) the chief health officer of the State,
13 acting through the State Advisory Committee,
14 held public hearings on the plan; and

15 “(ii) proposals for the plan were made
16 public in a manner that facilitated comments
17 from public and private entities (including Fed-
18 eral and other public agencies).

19 “(B) The State agrees that, if any substantial
20 revisions are made in such plan during the fiscal
21 year, the State will, with respect to the revisions,
22 hold hearings and make proposals public in accord-
23 ance with subparagraph (A), and will submit to the
24 Secretary a description of the revisions.

1 “(2) The State has established an advisory
2 committee in accordance with subsection (d).

3 “(3) The State agrees to expend payments
4 under section 2833 only for the activities authorized
5 in section 2835.

6 “(4) The State agrees to expend such payments
7 in accordance with the State plan submitted under
8 subsection (a)(2) (with any revisions submitted to
9 the Secretary under paragraph (1)(B)), including
10 making expenditures to carry out the strategy con-
11 tained in the plan pursuant to subsection (b)(5).

12 “(5)(A) The State agrees that, in the case of
13 each population for which such strategy is carried
14 out, the State will measure the extent of progress
15 being made toward improving the health status of
16 the population.

17 “(B) The State agrees that—

18 “(i) the State will collect and report data
19 in accordance with section 2837(a);

20 “(ii) for purposes of subparagraph (A),
21 progress will be measured through the use of
22 the applicable uniform data items developed by
23 the Secretary under section 2837(a)(2), or if no
24 such items are applicable, through use of the

1 uniform criteria developed by the Secretary
2 under section 2837(a)(3).

3 “(6) With respect to the activities authorized in
4 section 2835, the State agrees to maintain State ex-
5 penditures for such activities at a level that is not
6 less than the average level of such expenditures
7 maintained by the State for the 2-year period pre-
8 ceding the fiscal year for which the State is applying
9 to receive payments under section 2833.

10 “(7) The State agrees to establish reasonable
11 criteria to evaluate the effective performance of enti-
12 ties that receive funds from such payments and pro-
13 cedures for procedural and substantive independent
14 State review of the failure by the State to provide
15 funds for any such entity.

16 “(8) The State agrees to permit and cooperate
17 with Federal investigations undertaken in accord-
18 ance with section 2838.

19 “(d) STATE ADVISORY COMMITTEE.—

20 “(1) IN GENERAL.—For purposes of subsection
21 (c)(2) and section 2846(c)(2), an advisory committee
22 is in accordance with this subsection if such commit-
23 tee meets the conditions described in this subsection.

1 “(2) DUTIES.—A condition under paragraph
2 (1) for a State is that the duties of the committee
3 are—

4 “(A) to hold public hearings on the State
5 plans required under subsection (a)(2) and sec-
6 tion 2846(a)(2); and

7 “(B) to make recommendations pursuant
8 to subsection (b)(1) and section 2846(b)(1) re-
9 garding the development and implementation of
10 such plans, including recommendations on—

11 “(i) the conduct of assessments under
12 the plans;

13 “(ii) which of the activities authorized
14 in section 2835 and section 2845 should be
15 carried out in the State;

16 “(iii) the allocation of payments made
17 to the State under sections 2833 and
18 2843;

19 “(iv) the coordination of activities car-
20 ried out under such plans with relevant
21 programs of other entities; and

22 “(v) the collection and reporting of
23 data in accordance with sections 2837(a)
24 and 2847(a).

25 “(3) COMPOSITION.—

1 “(A) IN GENERAL.—A condition under
2 paragraph (1) for a State is that the advisory
3 committee be composed of such members of the
4 general public, such officials of the health de-
5 partments of political subdivisions of the State,
6 and such experts in tobacco product research as
7 may be necessary to provide adequate represen-
8 tation of the general public and of such health
9 departments, and that members of the Advisory
10 Committee shall be subject to the provisions of
11 sections 201, 202, and 203 of title 18, United
12 States Code..

13 “(B) REPRESENTATIVES.—With respect to
14 compliance with subparagraph (A), the mem-
15 bership of the advisory committee established
16 pursuant to subsection (c)(2) may include rep-
17 resentatives of community-based organizations
18 (including minority community-based organiza-
19 tions), schools of public health, and entities to
20 which the State involved awards grants or con-
21 tracts to carry out activities authorized under
22 sections 2835 and 2845.

23 “(4) CHAIRPERSON; MEETINGS.—A condition
24 under paragraph (1) for a State is that the State
25 public health officer shall serve as the chairperson of

1 the advisory committee, and that the committee
2 meet not less than twice each fiscal year.

3 **"SEC. 2837. REPORTS, DATA, AND AUDITS.**

4 "(a) DATA.—

5 "(1) COLLECTION AND REPORTING.—For pur-
6 poses of section 2836(c)(5)(B)(i), a State is collect-
7 ing and reporting data for a fiscal year in accord-
8 ance with this subsection if the State submits to the
9 Secretary, not later than February 1 of the succeed-
10 ing fiscal year a report that—

11 "(A) describes the purposes for which the
12 State expended payments made to the State
13 under section 2833;

14 "(B) pursuant to section 2836(c)(5)(A),
15 describes the extent of progress made by the
16 State for purposes of such section;

17 "(C) meets the conditions described para-
18 graph (2); and

19 "(D) contains such additional information
20 regarding activities authorized under section
21 2835, and is submitted in such form, as the
22 Secretary may require.

23 "(2) UNIFORM DATA SETS.—

24 "(A) IN GENERAL.—The Secretary, in con-
25 sultation with the States, shall develop sets of

1 data for uniformly defining levels of youth and
2 adult use of tobacco products (referred to as
3 'uniform tobacco product use data items'). The
4 Secretary shall develop formats for the uniform
5 collecting and reporting of information on such
6 items.

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

16 "(3) UNIFORM CRITERIA.—The Secretary, in
17 consultation with the States, shall establish criteria
18 for the uniform collection and reporting of data on
19 activities authorized in section 2845 with respect to
20 which no uniform tobacco product use data items
21 under paragraph (2) exist.

22 "(4) PUBLIC INSPECTION OF REPORTS.—A con-
23 dition under paragraph (1) for a fiscal year is that
24 the State involved will make copies of the report
25 submitted under such paragraph for the fiscal year

1 available for public inspection, and will upon request
2 provide a copy of the report to any individual for
3 a charge not exceeding the cost of providing the
4 copy.

5 “(b) AUDITS.—

6 “(1) FISCAL CONTROL AND ACCOUNTING PRO-
7 CEDURES.—Each State shall establish fiscal control
8 and fund accounting procedures as may be necessary
9 to ensure the proper disbursement of and accounting for
10 Federal funds paid to the State under section 2833.

11 “(2) ANNUAL SUBMISSION.—Each State shall
12 annually audit its expenditures from payments re-
13 ceived under section 2833. Such State audits shall
14 be conducted by an entity independent of any agency
15 administering a program funded under this subtitle,
16 and, in so far as practical, in accordance with the
17 Comptroller General’s standards for auditing govern-
18 mental organizations, programs, activities, and func-
19 tions. Within 30 days following the date on which
20 each audit is completed, the chief executive officer of
21 the State shall transmit a copy of that audit to the
22 Secretary.

23 “(3) REPAYMENTS.—Each State shall, after
24 being provided by the Secretary with adequate notice
25 and an opportunity for a hearing within the State,

1 repay to the United States amounts found not to
2 have been expended in accordance with the require-
3 ments of this subtitle or the certification provided by
4 the State under section 2836. If such repayment is
5 not made, the Secretary shall, after providing the
6 State with adequate notice and opportunity for a
7 hearing within the State, offset such amounts
8 against the amount of any allotment to which the
9 State is or may become entitled under this subtitle.

10 “(4) AVAILABILITY.—The State shall make cop-
11 ies of the reports and audits required by this sub-
12 section available for public inspection within the
13 State.

14 “(5) EVALUATION.—The Comptroller General
15 of the United States shall, from time to time, evalu-
16 ate the expenditures by the States of payments
17 under this subtitle in order to ensure that expendi-
18 tures are consistent with the provisions of this sub-
19 title and the certification provide by the State under
20 section 2836.

21 “(6) REPORT BY SECRETARY.—Not later than
22 October 1, 2000, the Secretary shall prepare and
23 submit to the appropriate committees of Congress a
24 report concerning the activities of the States that
25 have received funds under this subtitle and may in-

1 clude in the report any recommendations for appro-
2 priate changes in legislation.

3 “(c) NONAPPLICATION OF CERTAIN PROVISIONS.—
4 Title XVII of the Omnibus budget Reconciliation Act of
5 1981 shall not apply with respect to audits of funds allot-
6 ted under this subtitle.

7 **“SEC. 2838. WITHHOLDING.**

8 “(a) WITHHOLDING FOR MISUSE.—

9 “(1) IN GENERAL.—The Secretary shall, after
10 adequate notice and opportunity for a hearing con-
11 ducted within the affected State, withhold funds
12 from any State which does not use its allotment in
13 accordance with the requirements of this subtitle or
14 the certifications otherwise provided by States under
15 this subtitle. The Secretary shall withhold such
16 funds until the Secretary finds that the reason for
17 the withholding has been removed and there is rea-
18 sonable assurance that it will not recur.

19 “(2) INVESTIGATION.—The Secretary may not
20 institute proceedings to withhold funds under para-
21 graph (1) unless the Secretary has conducted an in-
22 vestigation concerning whether the State has used
23 its allotment in accordance with the requirements of
24 this subtitle or the certifications otherwise provided
25 under this subtitle. Investigations required by this

1 paragraph shall be conducted within the affected
2 State by qualified investigators.

3 “(3) RESPONSE TO COMPLAINTS.—The Sec-
4 retary shall respond in an expeditious manner to
5 complaints of a substantial or serious nature that a
6 State has failed to use funds in accordance with the
7 requirements of this subtitle or the certifications
8 otherwise provided under this subtitle.

9 “(4) MINOR FAILURES.—The Secretary may
10 not withhold funds under paragraph (1) from a
11 State for a minor failure to comply with the require-
12 ments of this subtitle or certifications otherwise pro-
13 vided under this subtitle.

14 “(b) INVESTIGATIONS.—

15 “(1) BY SECRETARY.—The Secretary shall con-
16 duct in several States in each fiscal year investiga-
17 tions of the use of funds received by the States
18 under this subtitle in order to evaluate compliance
19 with the requirements of this subtitle and certifi-
20 cations otherwise provided under this subtitle.

21 “(2) BY COMPTROLLER GENERAL.—The Comp-
22 troller General of the United States may conduct in-
23 vestigations of the use of funds received under this
24 subtitle by a State in order to insure compliance

1 with the requirements of this subtitle and certifi-
2 cations otherwise provided under this subtitle.

3 “(c) AVAILABILITY OF RECORDS.—Each State, and
4 each entity which has received funds from an allotment
5 made to a State under this subtitle, shall make appro-
6 priate books, documents, papers, and records available to
7 the Secretary or the Comptroller General of the United
8 States, or any of their duly authorized representatives, for
9 examination, copying, or mechanical reproduction on or
10 off the premises of the appropriate entity upon a reason-
11 able request therefore.

12 “(d) LIMITATION.—

13 “(1) IN GENERAL.—In conducting any inves-
14 tigation in a State, the Secretary or the Comptroller
15 General of the United States may not make a re-
16 quest for any information not readily available to
17 such State or an entity which has received funds
18 from an allotment made to the State under this sub-
19 title or make an unreasonable request for informa-
20 tion to be compiled, collected, or transmitted in any
21 form not readily available.

22 “(2) NONAPPLICATION TO JUDICIAL PROCEED-
23 INGS.—Paragraph (1) does not apply to the collec-
24 tion, compilation, or transmittal of data in the
25 course of a judicial proceeding.

1 **"SEC. 2839. NONDISCRIMINATION.**

2 “(a) PROGRAMS AND ACTIVITIES.—

3 “(1) IN GENERAL.—For the purpose of apply-
4 ing the prohibitions against discrimination on the
5 basis of age under the Age Discrimination Act of
6 1975, on the basis of handicap under section 504 of
7 the Rehabilitation Act of 1973, on the basis of gen-
8 der under title IX of the Education Amendments of
9 1972, or on the basis of race, color, or national ori-
10 gin under title VI of the Civil Rights Act of 1964,
11 programs and activities funded in whole or in part
12 with funds made available under this subtitle are
13 considered to be programs and activities receiving
14 Federal financial assistance.

15 “(2) GENDER OR RELIGION.—No person shall
16 on the ground of gender or religion be excluded from
17 participation in, be denied the benefits of, or be sub-
18 jected to discrimination under, any program or ac-
19 tivity funded in whole or in part with funds made
20 available under this subtitle.

21 “(b) FAILURE TO COMPLY.—Whenever the Secretary
22 finds that a State, or an entity that has received a pay-
23 ment from an allotment to a State under this subtitle, has
24 failed to comply with a provision of law referred to in sub-
25 section (a)(1), with subsection (a)(2), or with an applica-
26 ble regulation (including one prescribed to carry out sub-

1 section (a)(2)), the Secretary shall notify the chief execu-
2 tive officer of the State and shall request such officer to
3 secure compliance. If within a reasonable period of time,
4 not to exceed 60 days, the chief executive officer fails or
5 refuses to secure compliance, the Secretary may—

6 “(1) refer the matter to the Attorney General
7 with a recommendation that an appropriate civil ac-
8 tion be instituted;

9 “(2) exercise the powers and functions provided
10 by title VI of the Civil Rights Act of 1964, the Age
11 Discrimination Act of 1975, or section 504 of the
12 Rehabilitation Act of 1973, as may be applicable; or

13 “(3) take such other action as may be provided
14 by law.

15 “(c) ACTION BY ATTORNEY GENERAL.—When a
16 matter is referred to the Attorney General pursuant to
17 subsection (b)(1), or whenever the Attorney General has
18 reason to believe that a State or an entity is engaged in
19 a pattern or practice in violation of a provision of law re-
20 ferred to in subsection (a)(1) or in violation of subsection
21 (a)(2), the Attorney General may bring a civil action in
22 any appropriate district court of the United States for
23 such relief as may be appropriate, including injunctive re-
24 lief.

1 **"SEC. 2840. CRIMINAL PENALTY FOR FALSE STATEMENTS.**

2 "Whoever—

3 "(1) knowingly and willfully makes or causes to
4 be made any false statement or representation of a
5 material fact in connection with the furnishing of
6 items or services for which payment may be made by
7 a State from funds allotted to the State under this
8 subtitle; or

9 "(2) having knowledge of the occurrence of any
10 event affecting his or her initial or continued right
11 to any such payment conceals or fails to disclose
12 such event with an intent fraudulently to secure
13 such payment either in a greater amount than is due
14 or when no such payment is authorized;

15 shall be fined not more than \$25,000 or imprisoned for
16 not more than 5 years, or both.

17 **"Subtitle D—Smoking Cessation**
18 **Programs**

19 **"SEC. 2841. FUNDING FROM TOBACCO SETTLEMENT TRUST**
20 **FUND.**

21 "(a) IN GENERAL.—There shall be made available
22 from the Tobacco Settlement Trust Fund to carry out this
23 subtitle—

24 "(1) \$535,000,000 for fiscal year 1999;

25 "(2) \$573,000,000 for fiscal year 2000;

26 "(3) \$585,000,000 for fiscal year 2001;

1 “(4) \$620,000,000 for fiscal year 2002;

2 “(5) \$1,000,000,000 for fiscal year 2003;

3 “(6) \$1,100,000,000 for each of the fiscal years
4 2004 and 2005; and

5 “(7) \$1,145,000,000 for each of the fiscal years
6 2006 through 2008.

7 “(b) LIMITATION.—Not more than—

8 “(1) 6 percent of the amount made available for
9 any fiscal year under subsection (a) shall be made
10 available to the Secretary to carry out activities
11 under section 2842(c); and

12 “(2) 4 percent of the amount made available for
13 any fiscal year under subsection (a) shall be made
14 available to the Secretary to carry out activities
15 under section 2842(d).

16 “(c) SUNSET PROVISION.—This subtitle shall termi-
17 nate on September 30, 2009.

18 **“SEC. 2842. ALLOTMENTS.**

19 “(a) IN GENERAL.—From the amount made avail-
20 able under section 2841 for any fiscal year, the Secretary,
21 acting through the Director of the Office on Smoking and
22 Health of the Centers for Disease Control and Prevention,
23 shall allot to each State the applicable percentage of such
24 amount in accordance with the following table:

State	Applicable Percentage
Alabama	1.238619
Alaska	0.500000
Arizona	1.134776

Arkansas	0.732229
California	8.585426
Colorado	1.027658
Connecticut	1.557000
Delaware	0.500000
District of Columbia	0.521120
Florida	3.500870
Georgia	1.956917
Hawaii	0.626458
Idaho	0.500000
Illinois	4.166040
Indiana	1.671714
Iowa	0.739712
Kansas	0.743167
Kentucky	1.828537
Louisiana	1.868947
Maine	0.848964
Maryland	2.000535
Massachusetts	3.607905
Michigan	4.320991
Minnesota	2.412484
Mississippi	0.830156
Missouri	1.617624
Montana	0.500000
Nebraska	0.500000
Nevada	0.500000
New Hampshire	0.538242
New Jersey	3.406803
New Mexico	0.500000
New York	14.166024
North Carolina	2.045166
North Dakota	0.500000
Ohio	4.572863
Oklahoma	0.820915
Oregon	1.065587
Pennsylvania	5.102394
Rhode Island	0.801176
South Carolina	0.861529
South Dakota	0.500000
Tennessee	2.417855
Texas	4.340060
Utah	0.500000
Vermont	0.500000
Virginia	1.339502
Washington	1.749731
West Virginia	0.978560
Wisconsin	2.046211
Wyoming	0.500000
American Samoa	0.008463
N. Mariana Islands	0.001481
Guam	0.006343
U.S. Virgin Islands	0.004683
Puerto Rico	0.188344

1 “(b) REALLOTMENT.—To the extent that amounts
2 made available under section 2831 for a fiscal year are
3 not otherwise allotted to States because—

4 “(1) 1 or more States have not submitted an
5 application or description of activities in accordance
6 with section 2845 for the fiscal year;

7 “(2) 1 or more States have notified the Sec-
8 retary that they do not intend to use the full amount
9 of their allotment; or

10 “(3) the Secretary has determined that the
11 State is not in compliance with this title, and there-
12 fore is subject to penalties under section 2847;
13 such excess amount shall be reallocated among each of the
14 remaining States in proportion to the amount otherwise
15 allotted to such States for the fiscal year involved without
16 regard to this subsection.

17 “(c) ANALYSES AND SPECIAL PROGRAMS.—The Sec-
18 retary, acting through the Administrator of the Agency
19 for Health Care Policy and Research, shall support—

20 “(1) and conduct periodic analyses and evalua-
21 tions of the best scientific information in the area of
22 smoking and other tobacco product use cessation;
23 and

1 “(2) the development and dissemination of spe-
2 cial programs in cessation intervention for health
3 plans and national health professional societies.

4 “(d) ALLOCATION FOR TECHNICAL ASSISTANCE,
5 TRAINING, DATA COLLECTION, AND PROGRAM EVALUA-
6 TION.—

7 “(1) IN GENERAL.—To carry out this sub-
8 section and section 2844, the Secretary shall obli-
9 gate not more than 4 percent of the amount made
10 available for any fiscal year under section 2841.

11 “(2) DATA COLLECTION.—Amounts made avail-
12 able under this subsection may be used to carry out
13 section 2847.

14 “(e) REGULATIONS.—Not later than 9 months after
15 the date of enactment of this title, the Secretary shall pro-
16 mulgate regulations to implement this subtitle. This sub-
17 title shall take effect regardless of the date on which such
18 regulations are promulgated.

19 **“SEC. 2843. PAYMENTS UNDER ALLOTMENTS TO STATES.**

20 “(a) IN GENERAL.—The Secretary, acting through
21 the Office on Smoking and Health of the Centers for Dis-
22 ease Control and Prevention, shall make payments to
23 States under allotments under this subtitle as provided for
24 under section 203 of the Intergovernmental Cooperation
25 Act of 1968.

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

6 **“SEC. 2844. TECHNICAL ASSISTANCE AND PROVISION OF**
7 **SUPPLIES AND SERVICES IN LIEU OF FUNDS.**

8 “(a) TECHNICAL ASSISTANCE.—The Secretary shall,
9 without charge to a State receiving an allotment under
10 section 2842, provide to such State (or to any public or
11 nonprofit private entity within the State) technical assist-
12 ance and training with respect to the planning, develop-
13 ment, and operation of any program or service carried out
14 pursuant to the program involved. The Secretary may pro-
15 vide such technical assistance or training directly, through
16 contract, or through grants.

17 “(b) PROVISION OF SUPPLIES AND SERVICE IN LIEU
18 OF GRANT FUNDS.—The Secretary, at the request of a
19 State, may reduce the amount of payments to the State
20 under section 2843 by—

21 “(1) the fair market value of any supplies or
22 equipment furnished by the Secretary to the State;
23 and

24 “(2) the amount of the pay, allowances, and
25 travel expenses of any officer or employee of the

1 Federal Government when detailed to the State and
2 the amount of any other costs incurred in connection
3 with the detail of such officer or employee;
4 when the furnishing of such supplies or equipment or the
5 detail of such an officer or employee is for the convenience
6 of and at the request of the State and for the purpose
7 of conducting activities described in section 2845. The
8 amount by which any payment is so reduced shall be avail-
9 able for payment by the Secretary of the costs incurred
10 in furnishing the supplies or equipment or in detailing the
11 personnel, on which reduction of the payment is based,
12 and the amount shall be deemed to be part of the payment
13 and shall be deemed to have been paid to the State.

14 **"SEC. 2845. USE OF ALLOTMENTS.**

15 **"(a) TOBACCO USE CESSATION ACTIVITIES.—**

16 **"(1) IN GENERAL.—**Except as provided in sub-
17 sections (b) and (c), amounts paid to a State under
18 section 2843 may be used for the following:

19 **"(A) Evidence-based cessation activities**
20 **described in the plan of the State, submitted in**
21 **accordance with section 2845, including—**

22 **"(i) science-based programs designed**
23 **to assist individuals to quit their use of to-**
24 **bacco products;**

1 “(ii) training in cessation intervention
2 methods for health plans and health pro-
3 fessionals, including physicians, nurses,
4 dentists, health educators, public health
5 professionals, and other health care provid-
6 ers;

7 “(iii) programs to encourage health
8 insurers and health plans to provide cov-
9 erage for science-based tobacco use ces-
10 sation interventions and therapies; and

11 “(iv) programs targeted toward mi-
12 nority and low-income individuals residing
13 in medically underserved areas that are
14 cultural and linguistically appropriate for
15 such individuals.

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

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

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

4 “(2) COORDINATION.—Tobacco use cessation
5 activities permitted under paragraph (1) may be
6 conducted in coordination with other Federally fund-
7 ed programs, including—

8 “(A) the special supplemental food pro-
9 gram under section 17 of the Child Nutrition
10 Act of 1966 (42 U.S.C. 1786);

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

14 “(C) the State Children’s Health Insur-
15 ance Program of the State under title XXI of
16 the Social Security Act (42 U.S.C. 13397aa et
17 seq.);

18 “(D) the school lunch program under the
19 National School Lunch Act (42 U.S.C. 1751 et
20 seq.);

21 “(E) an Indian Health Service Program;

22 “(F) the community health center program
23 under section 330 of the Public Health Service
24 Act (42 U.S.C. 254b);

1 “(G) state-initiated smoking cessation pro-
2 grams that include provisions for reimbursing
3 individuals for medications or therapeutic tech-
4 niques;

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

10 “(I) the medicaid program under title XIX
11 of the Social Security Act (42 U.S.C. 1396 et
12 seq.); and

13 “(J) programs administered by the De-
14 partment of Veterans Affairs.

15 “(3) TECHNICAL ASSISTANCE.—The Secretary
16 may provide technical assistance to States in plan-
17 ning and operating activities to be carried out under
18 this subtitle.

19 “(b) LIMITATION.—A State may not use amounts
20 paid to the State under section 2843 to—

21 “(1) make cash payments to intended recipients
22 of tobacco use cessation services;

23 “(2) purchase or improve land, purchase, con-
24 struct, or permanently improve (other than minor

1 remodeling) any building or other facility, or pur-
2 chase major medical equipment;

3 “(3) satisfy any requirement for the expendi-
4 ture of non-Federal funds as a condition of the re-
5 ceipt of Federal funds; or

6 “(4) provide financial assistance to any entity
7 other than a public or nonprofit private entity.

8 “(c) ADMINISTRATION.—Not more than 8 percent of
9 the allotment of a State for a fiscal year under this sub-
10 title may be used by the State to administer the funds
11 paid to the State under section 2843. The State shall pay
12 from non-Federal sources the remaining costs of admin-
13 istering such funds.

14 **“SEC. 2846. APPLICATION FOR PAYMENTS; STATE PLAN.**

15 “(a) IN GENERAL.—The Secretary may make pay-
16 ments under section 2843 to a State for a fiscal year only
17 if—

18 “(1) the State submits to the Secretary an ap-
19 plication for such payments;

20 “(2) the application contains a State plan in ac-
21 cordance with subsection (b);

22 “(3) the application contains the certification
23 described in subsection (c);

24 “(4) the application contains such assurances
25 as the Secretary may require regarding the compli-

1 ance of the State with the requirements of this sub-
2 title (including assurances regarding compliance
3 with the agreements described in subsection (c));
4 and

5 “(5) the application is in such form and is sub-
6 mitted by such date as the Secretary may require.

7 “(b) STATE PLAN.—A State plan required in sub-
8 section (a)(2) for a fiscal year is in accordance with this
9 subsection if the plan meets the following conditions:

10 “(1) The plan is developed by the State agency
11 with principal responsibility for the programmatic
12 aspects of the development, implementation, and
13 maintenance of public health programs, in consulta-
14 tion with the advisory committee established pursu-
15 ant to subsection (c)(2).

16 “(2) The plan provides for tobacco use ces-
17 sation intervention and treatment consistent with
18 the smoking cessation guidelines issued by the Agen-
19 cy for Health Care Policy and Research, or another
20 evidence-based guideline approved by the Secretary,
21 or treatments using drugs, human biological prod-
22 ucts, or medical devices approved by the Food and
23 Drug Administration, or otherwise legally marketed
24 under the Federal Food, Drug and Cosmetic Act for
25 use as smoking cessation therapies or aids. Alter-

1 natively, to encourage innovation and experimen-
2 tation with new methodologies, the plan may provide
3 for or may include a targeted pilot program with an
4 evaluation component.

5 “(3) The plan specifies the populations in the
6 State for which such activities are to be carried out,
7 and specifies the populations in the State that have
8 a disparate need for such activities.

9 “(4) With respect to each population specified
10 under paragraph (3), the plan contains a strategy
11 for expending such payments to carry out such ac-
12 tivities. Such strategy shall include—

13 “(A) a description of the programs and
14 projects to be carried out;

15 “(B) an estimate of the number of individ-
16 uals to be served by the programs and projects;
17 and

18 “(C) an estimate of the number of public
19 health personnel needed to carry out the strat-
20 egy.

21 “(5) The plan specifies the amount of such pay-
22 ments to be expended for each of such activities and,
23 with respect to the activity involved, the amount to
24 be expended for each population specified under
25 paragraph (3).

1 “(6) The plan provides for training in tobacco
2 use cessation intervention methods for health plans
3 and health professionals, including physicians,
4 nurses, dentists, health educators, public health pro-
5 fessionals, and other health care providers.

6 “(7) The plan ensures access to smoking ces-
7 sation programs for rural and underserved popu-
8 lations.

9 “(8) The plan describes the measurable objec-
10 tives, developed in consultation with the Secretary,
11 that will be used to evaluate program outcomes.

12 “(9) The plan describes the monitoring and
13 evaluation process and the mechanisms for making
14 resulting information available to the public.

15 “(c) STATE CERTIFICATION.—The certification re-
16 ferred to in subsection (a)(3) for a fiscal year is a certifi-
17 cation to the Secretary by the chief executive officer of
18 the State involved as follows:

19 “(1)(A) In the development of the State plan
20 required in subsection (a)(2)—

21 “(i) the chief health officer of the State
22 held public hearings on the plan; and

23 “(ii) proposals for the plan were made
24 public in a manner that facilitated comments

1 from public and private entities (including Fed-
2 eral and other public agencies).

3 “(B) The State agrees that, if any substantial
4 revisions are made in such plan during the fiscal
5 year, the State will, with respect to the revisions,
6 hold hearings and make proposals public in accord-
7 ance with subparagraph (A), and will submit to the
8 Secretary a description of the revisions.

9 “(2) The State has established an advisory
10 committee in accordance with section 2836(d).

11 “(3) The State agrees to expend payments
12 under section 2843 only for the activities authorized
13 in section 2845.

14 “(4) The State agrees to expend such payments
15 in accordance with the State plan submitted under
16 subsection (a)(2) (with any revisions submitted to
17 the Secretary under paragraph (1)(B)), including
18 making expenditures to carry out the strategy con-
19 tained in the plan pursuant to subsection (b)(5).

20 “(5)(A) The State agrees that, in the case of
21 each population for which such strategy is carried
22 out, the State will measure the extent of progress
23 being made toward improving the health status of
24 the population.

25 “(B) The State agrees that—

1 “(i) the State will collect and report data
2 in accordance with section 2847(a)

3 “(ii) for purposes of subparagraph (A),
4 progress will be measured through the use of
5 the applicable uniform data items developed by
6 the Secretary under section 2847(a)(2), or if no
7 such items are applicable, through use of the
8 uniform criteria developed by the Secretary
9 under section 2847(a)(3).

10 “(6) With respect to the activities authorized in
11 section 2845, the State agrees to maintain State ex-
12 penditures for such activities at a level that is not
13 less than the average level of such expenditures
14 maintained by the State for the 2-year period pre-
15 ceding the fiscal year for which the State is applying
16 to receive payments under section 2843.

17 “(7) The State agrees to establish reasonable
18 criteria to evaluate the effective performance of enti-
19 ties that receive funds from such payments and pro-
20 cedures for procedural and substantive independent
21 State review of the failure by the State to provide
22 funds for any such entity.

23 “(8) The State agrees to permit and cooperate
24 with Federal investigations undertaken in accord-
25 ance with section 2848.

1 **"SEC. 2847. REPORTS, DATA, AND AUDITS.**

2 “(a) DATA.—

3 “(1) COLLECTION AND REPORTING.—For pur-
4 poses of section 2846(c)(5)(B)(i), a State is collect-
5 ing and reporting data for a fiscal year in accord-
6 ance with this subsection if the State submits to the
7 Secretary, not later than February 1 of the succeed-
8 ing fiscal year a report that—

9 “(A) describes the purposes for which the
10 State expended payments made to the State
11 under section 2843;

12 “(B) pursuant to section 2846(c)(5)(A),
13 describes the extent of progress made by the
14 State for purposes of such section;

15 “(C) meets the conditions described para-
16 graph (2); and

17 “(D) contains such additional information
18 regarding activities authorized under section
19 2845, and is submitted in such form, as the
20 Secretary may require.

21 “(2) UNIFORM DATA SETS.—

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

1 Secretary shall develop formats for the uniform
2 collecting and reporting of information on such
3 items.

4 “(B) LATER FISCAL YEARS.—In the case of fis-
5 cal year 2000 and each subsequent fiscal year, a
6 condition under paragraph (1) for a State is that the
7 State will, in accordance with the applicable format
8 under subparagraph (A), collect during such year,
9 and include in the report under paragraph (1), the
10 necessary information for each of the tobacco prod-
11 uct use data items.

12 “(3) UNIFORM CRITERIA.—The Secretary, in
13 consultation with the States, shall establish criteria
14 for the uniform collection and reporting of data on
15 activities authorized in section 2845 with respect to
16 which no uniform tobacco product use data items
17 under paragraph (2) exist.

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

25 “(b) AUDITS.—

1 “(1) FISCAL CONTROL AND ACCOUNTING PRO-
2 CEDURES.—Each State shall establish fiscal control
3 and fund accounting procedures as may be necessary
4 to ensure the proper disbursement of and accounting for
5 Federal funds paid to the State under section 2843
6 and funds transferred for use under this subtitle.

7 “(2) ANNUAL SUBMISSION.—Each State shall
8 annually audit its expenditures from payments re-
9 ceived under section 2843. Such State audits shall
10 be conducted by an entity independent of any agency
11 administering a program funded under this subtitle,
12 and, in so far as practical, in accordance with the
13 Comptroller General’s standards for auditing govern-
14 mental organizations, programs, activities, and func-
15 tions. Within 30 days following the date on which
16 each audit is completed, the chief executive officer of
17 the State shall transmit a copy of that audit to the
18 Secretary.

19 “(3) REPAYMENTS.—Each State shall, after
20 being provided by the Secretary with adequate notice
21 and an opportunity for a hearing within the State,
22 repay to the United States amounts found not to
23 have been expended in accordance with the require-
24 ments of this subtitle or the certification provided by
25 the State under section 2846. If such repayment is

1 not made, the Secretary shall, after providing the
2 State with adequate notice and opportunity for a
3 hearing within the State, offset such amounts
4 against the amount of any allotment to which the
5 State is or may become entitled under this subtitle.

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

10 “(5) EVALUATION.—The Comptroller General
11 of the United States shall, from time to time, evalu-
12 ate the expenditures by the States of payments
13 under this subtitle in order to ensure that expendi-
14 tures are consistent with the provisions of this sub-
15 title and the certification provide by the State under
16 section 2846.

17 “(6) REPORT BY SECRETARY.—Not later than
18 October 1, 2000, the Secretary shall prepare and
19 submit to the appropriate committees of Congress a
20 report concerning the activities of the States that
21 have received funds under this subtitle and may in-
22 clude in the report any recommendations for appro-
23 priate changes in legislation.

24 “(c) NONAPPLICATION OF CERTAIN PROVISIONS.—
25 Title XVII of the Omnibus Budget Reconciliation Act of

1 1981 shall not apply with respect to audits of funds allot-
2 ted under this subtitle.

3 **"SEC. 2848. WITHHOLDING.**

4 “(a) WITHHOLDING FOR MISUSE.—

5 “(1) IN GENERAL.—The Secretary shall, after
6 adequate notice and opportunity for a hearing con-
7 ducted within the affected State, withhold funds
8 from any State which does not use its allotment in
9 accordance with the requirements of this subtitle or
10 the certifications otherwise provided by States under
11 this subtitle. The Secretary shall withhold such
12 funds until the Secretary finds that the reason for
13 the withholding has been removed and there is rea-
14 sonable assurance that it will not recur.

15 “(2) INVESTIGATION.—The Secretary may not
16 institute proceedings to withhold funds under para-
17 graph (1) unless the Secretary has conducted an in-
18 vestigation concerning whether the State has used
19 its allotment in accordance with the requirements of
20 this subtitle or the certifications otherwise provided
21 under this subtitle. Investigations required by this
22 paragraph shall be conducted within the affected
23 State by qualified investigators.

24 “(3) RESPONSE TO COMPLAINTS.—The Sec-
25 retary shall respond in an expeditious manner to

1 complaints of a substantial or serious nature that a
2 State has failed to use funds in accordance with the
3 requirements of this subtitle or the certifications
4 otherwise provided under this subtitle.

5 “(4) MINOR FAILURES.—The Secretary may
6 not withhold funds under paragraph (1) from a
7 State for a minor failure to comply with the require-
8 ments of this subtitle or certifications otherwise pro-
9 vided under this subtitle.

10 “(b) INVESTIGATIONS.—

11 “(1) BY SECRETARY.—The Secretary shall con-
12 duct in several States in each fiscal year investiga-
13 tions of the use of funds received by the States
14 under this subtitle in order to evaluate compliance
15 with the requirements of this subtitle and certifi-
16 cations otherwise provided under this subtitle.

17 “(2) BY COMPTROLLER GENERAL.—The Comp-
18 troller General of the United States may conduct in-
19 vestigations of the use of funds received under this
20 subtitle by a State in order to insure compliance
21 with the requirements of this subtitle and certifi-
22 cations otherwise provided under this subtitle.

23 “(c) AVAILABILITY OF RECORDS.—Each State, and
24 each entity which has received funds from an allotment
25 made to a State under this subtitle, shall make appro-

1 priate books, documents, papers, and records available to
2 the Secretary or the Comptroller General of the United
3 States, or any of their duly authorized representatives, for
4 examination, copying, or mechanical reproduction on or
5 off the premises of the appropriate entity upon a reason-
6 able request therefore.

7 “(d) LIMITATION.—

8 “(1) IN GENERAL.—In conducting any inves-
9 tigation in a State, the Secretary or the Comptroller
10 General of the United States may not make a re-
11 quest for any information not readily available to
12 such State or an entity which has received funds
13 from an allotment made to the State under this sub-
14 title or make an unreasonable request for informa-
15 tion to be compiled, collected, or transmitted in any
16 form not readily available.

17 “(2) NONAPPLICATION TO JUDICIAL PROCEED-
18 INGS.—Paragraph (1) does not apply to the collec-
19 tion, compilation, or transmittal of data in the
20 course of a judicial proceeding.

21 **“SEC. 2849. NONDISCRIMINATION.**

22 “(a) PROGRAMS AND ACTIVITIES.—

23 “(1) IN GENERAL.—For the purpose of apply-
24 ing the prohibitions against discrimination on the
25 basis of age under the Age Discrimination Act of

1 1975, on the basis of handicap under section 504 of
2 the Rehabilitation Act of 1973, on the basis of gen-
3 der under title IX of the Education Amendments of
4 1972, or on the basis of race, color, or national ori-
5 gin under title VI of the Civil Rights Act of 1964,
6 programs and activities funded in whole or in part
7 with funds made available under this subtitle are
8 considered to be programs and activities receiving
9 Federal financial assistance.

10 “(2) GENDER OR RELIGION.—No person shall
11 on the ground of gender or religion be excluded from
12 participation in, be denied the benefits of, or be sub-
13 jected to discrimination under, any program or ac-
14 tivity funded in whole or in part with funds made
15 available under this subtitle.

16 “(b) FAILURE TO COMPLY.—Whenever the Secretary
17 finds that a State, or an entity that has received a pay-
18 ment from an allotment to a State under this subtitle, has
19 failed to comply with a provision of law referred to in sub-
20 section (a)(1), with subsection (a)(2), or with an applica-
21 ble regulation (including one prescribed to carry out sub-
22 section (a)(2)), the Secretary shall notify the chief execu-
23 tive officer of the State and shall request such officer to
24 secure compliance. If within a reasonable period of time,

1 not to exceed 60 days, the chief executive officer fails or
2 refuses to secure compliance, the Secretary may—

3 “(1) refer the matter to the Attorney General
4 with a recommendation that an appropriate civil ac-
5 tion be instituted;

6 “(2) exercise the powers and functions provided
7 by title VI of the Civil Rights Act of 1964, the Age
8 Discrimination Act of 1975, or section 504 of the
9 Rehabilitation Act of 1973, as may be applicable; or

10 “(3) take such other action as may be provided
11 by law.

12 “(c) ACTION BY ATTORNEY GENERAL.—When a
13 matter is referred to the Attorney General pursuant to
14 subsection (b)(1), or whenever he has reason to believe
15 that a State or an entity is engaged in a pattern or prac-
16 tice in violation of a provision of law referred to in sub-
17 section (a)(1) or in violation of subsection (a)(2), the At-
18 torney General may bring a civil action in any appropriate
19 district court of the United States for such relief as may
20 be appropriate, including injunctive relief.

21 **“SEC. 2850. CRIMINAL PENALTY FOR FALSE STATEMENTS.**

22 “Whoever—

23 “(1) knowingly and willfully makes or causes to
24 be made any false statement or representation of a
25 material fact in connection with the furnishing of

1 items or services for which payment may be made by
2 a State from funds allotted to the State under this
3 subtitle; or

4 “(2) having knowledge of the occurrence of any
5 event affecting his or her initial or continued right
6 to any such payment conceals or fails to disclose
7 such event with an intent fraudulently to secure
8 such payment either in a greater amount than is due
9 or when no such payment is authorized;

10 shall be fined not more than \$25,000 or imprisoned for
11 not more than 5 years, or both.

12 **“Subtitle E—Reducing Youth**
13 **Smoking and Tobacco-Related**
14 **Diseases Through Research**

15 **“SEC. 2851. STUDY BY THE INSTITUTE OF MEDICINE.**

16 “(a) CONTRACT.—Not later than 60 days after the
17 date of enactment of this title, the Secretary shall enter
18 into a contract with the Institute of Medicine for the con-
19 duct of a study on the framework for a research agenda
20 and research priorities to be used by the National Tobacco
21 Task Force established under section 2852.

22 **“(b) CONSIDERATIONS.—**

23 **“(1) IN GENERAL.—**In developing the frame-
24 work for the research agenda and research priorities
25 under subsection (a) the Institute of Medicine shall

1 focus on increasing knowledge concerning the bio-
2 logical, social, behavioral, public health, and commu-
3 nity factors involved in the prevention of tobacco
4 use, reduction of tobacco use, and health con-
5 sequences of tobacco use.

6 “(2) SPECIFIC CONSIDERATIONS.—In the study
7 conducted under subsection (a), the Institute of
8 Medicine shall specifically consider—

9 “(A) public health and community research
10 relating to tobacco use prevention methods, in-
11 cluding public education, media, community
12 strategies;

13 “(B) behavioral research relating to addic-
14 tion and tobacco use;

15 “(C) health services research relating to
16 tobacco product prevention and cessation treat-
17 ment methodologies;

18 “(D) surveillance and epidemiology re-
19 search relating to tobacco; and

20 “(E) biomedical, including clinical, re-
21 search relating to prevention and treatment of
22 tobacco-related diseases.

23 “(c) REPORT.—Not later than 10 months after the
24 date on which the Secretary enters into the contract under
25 subsection (a), the Institute of Medicine shall prepare and

1 submit to the Secretary, the National Task Force, the
2 Committee on Labor and Human Resources of the Senate,
3 and the Committee on Commerce of the House of Rep-
4 resentatives, a report that shall contain the findings and
5 recommendations of the Institute for the purposes de-
6 scribed in subsection (b).

7 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated \$750,000 to carry out
9 this section.

10 **“SEC. 2852. NATIONAL TOBACCO TASK FORCE.**

11 “(a) ESTABLISHMENT.—The Secretary shall estab-
12 lish a National Tobacco Task Force (referred to in this
13 subtitle as the ‘National Task Force’) to foster coordina-
14 tion among public health agencies, academic bodies, and
15 community groups that conduct or support tobacco-related
16 biomedical, clinical, behavioral, health services, public
17 health and community, and surveillance and epidemiology
18 research activities.

19 “(b) COMPOSITION.—The National Task Force shall
20 be composed of—

21 “(1) the Surgeon General;

22 “(2) the Director of the Office of Smoking and
23 Health of the Centers for Disease Control and Pre-
24 vention;

1 “(3) the Administrator of the Agency for
2 Health Care Policy and Research;

3 “(4) the Director of the National Institutes of
4 Health;

5 “(5) two representatives from non-governmental
6 public health or tobacco control organizations; and

7 “(6) two representatives from State or local
8 government public health agencies and offices.

9 “(c) CHAIR.—The National Task Force shall be
10 chaired by the Director of the Centers for Disease Control
11 and Prevention, or a designee of the Director, and shall
12 be staffed by the Centers for Disease Control and Preven-
13 tion.

14 “(d) DUTIES.—The Task Force shall—

15 “(1) in accordance with research agenda rec-
16 ommended under section 2851, coordinate and ad-
17 vise tobacco-related research activities among Fed-
18 eral public health service agencies;

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

24 “(3) report on a biennial basis to the Secretary
25 and the Committee on Labor and Human Resources

1 of the Senate, and the Committee on Commerce of
2 the House of Representatives on the current and
3 planned activities of participating Federal agencies;

4 “(e) RESEARCH ACTIVITIES.—The research activities
5 referred to in subsection (a) shall be designed to address
6 tobacco-related research priorities, and shall include—

7 “(1) the development of effective strategies to
8 prevent the use of tobacco products among youth;

9 “(2) an outline of cost-effective, accessible, and
10 successful methods for tobacco use cessation among
11 adults and youths who want to quit;

12 “(3) the development of breakthroughs in the
13 understanding of the effects on the human body of
14 nicotine and other non-tobacco constituents of to-
15 bacco products; and

16 “(4) the development of an enhanced ability to
17 prevent and treat tobacco-related diseases.

18 **“SEC. 2853. RESEARCH ACTIVITIES OF THE CENTERS FOR**
19 **DISEASE CONTROL AND PREVENTION.**

20 “(a) FUNDING.—There shall be made available from
21 the Tobacco Settlement Trust Fund to carry out this sec-
22 tion—

23 “(1) \$450,000,000 for each of the first 3 fiscal
24 years after the date of enactment of this title;

1 “(2) \$505,000,000 for each of the 4th and 5th
2 fiscal years after the date of enactment of this title;

3 “(3) \$405,000,000 for each of the 6th and 7th
4 fiscal years after the date of enactment of this title;

5 “(4) \$360,000,000 for each of the 8th and 9th
6 fiscal years after the date of enactment of this title;

7 and

8 “(5) \$305,000,000 for the 10th fiscal year after
9 the date of enactment of this title.

10 “(b) DUTIES.—The Director of the Centers for Dis-
11 ease Control and Prevention, working in consultation with
12 National Task Force, shall carry out tobacco-related sur-
13 veillance and epidemiologic studies and develop tobacco
14 control and prevention strategies under this section.

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

20 **“SEC. 2854. RESEARCH ACTIVITIES OF THE NATIONAL IN-**
21 **STITUTES OF HEALTH.**

22 “(a) FUNDING.—There shall be made available from
23 the Tobacco Settlement Trust Fund to carry out this sec-
24 tion \$2,500,000,000 for each of the fiscal years 1999
25 through 2008.

1 “(b) ESTABLISHMENT.—The Secretary shall estab-
2 lish, within the Office of the Director of the National In-
3 stitutes of Health, a Tobacco-Related Research Initiative
4 (referred to in this section as the ‘tobacco initiative’) to
5 be headed by the Director.

6 “(c) EXPENDITURE OF FUNDS.—The Director of the
7 National Institutes of Health acting through the tobacco
8 initiative, and in consultation with the National Tobacco
9 Task Force, shall provide funds to conduct or support epi-
10 demiological, behavioral, biomedical, and social science re-
11 search (including the training of researchers) related to
12 the prevention and treatment of tobacco addiction, and the
13 prevention and treatment of diseases associated with to-
14 bacco use.

15 “(d) GUARANTEED MINIMUM.—Of the funds made
16 available to the National Institutes of Health under this
17 section, not less than 33 percent of such funds shall be
18 used to support epidemiological, behavioral, and social
19 science research related to the prevention and treatment
20 of tobacco addiction.

21 “(e) LIMITATION.—Except as may be necessary to
22 study one of the specific purposes described in subsection
23 (f), funds made available under subsection (d) shall not
24 be used to support neurobiological research, or research
25 in which the behavior of an organism

1 is observed for the purpose of determining activity at the
2 cellular or molecular level.

3 “(f) NATURE OF RESEARCH.—Funds made available
4 under subsection (d) shall be used to conduct or support
5 research with respect to one or more of the following—

6 “(1) the epidemiology of tobacco use;

7 “(2) the etiology of tobacco use;

8 “(3) risk factors for tobacco use by children;

9 “(4) prevention of tobacco use by children, in-
10 cluding school and community-based programs, and
11 alternative activities;

12 “(5) the relationship between tobacco use, alco-
13 hol abuse and illicit drug abuse;

14 “(6) behavioral and pharmacological smoking
15 cessation methods and technologies, including re-
16 lapse prevention;

17 “(7) the toxicity of tobacco products and their
18 ingredients;

19 “(8) the relative harmfulness of different to-
20 bacco products;

21 “(9) environmental exposure to tobacco smoke;

22 “(10) the impact of tobacco use by pregnant
23 women on their fetuses; and

24 “(11) the redesign of tobacco products to re-
25 duce risks to public health and safety.

1 “(g) COORDINATION.—In carrying out tobacco-relat-
2 ed research under this section, the Director of the Na-
3 tional Institutes of Health, in coordination with the Na-
4 tional Tobacco Task Force, shall ensure appropriate co-
5 ordination with the research of other agencies, and shall
6 avoid duplicative efforts through all appropriate means,
7 including through the establishment of an Office of To-
8 bacco-Related Research.

9 “(h) OFFICE OF TOBACCO-RELATED RESEARCH.—

10 “(1) ESTABLISHMENT.—There is established
11 within the National Institutes of Health and Office
12 of Tobacco-Related Research (referred to in this
13 subsection as the ‘Office’). The Office shall be head-
14 ed by a director to be appointed by the Secretary.

15 “(2) DUTIES.—The director of the Office
16 shall—

17 “(A) in coordination with the National To-
18 bacco Task Force, identify tobacco-related re-
19 search projects that should be conducted or
20 supported by the research institutes, and de-
21 velop such projects in cooperation with such in-
22 stitutes;

23 “(B) coordinate tobacco-related research
24 that is conducted or supported by the National
25 Institutes of Health;

1 “(C) through the activities of the National
2 Tobacco Task Force, take steps to further co-
3 operation and collaboration between the insti-
4 tutes of the National Institutes of Health and
5 other Federal agencies with respect to tobacco-
6 related research conducted or supported by
7 such agencies;

8 “(D) ensure compliance with the funding
9 levels described in subsection (d) and the limi-
10 tation described in subsection (e);

11 “(E) annually recommend to Congress the
12 allocation of anti-tobacco research funds among
13 the national research institutes; and

14 “(F) establish a clearinghouse for informa-
15 tion about tobacco-related research conducted
16 by governmental and non-governmental bodies.

17 “(3) ADMINISTRATION.—The Director of the
18 National Institutes of Health shall set-aside not less
19 than 1 percent and not more than 3 percent of the
20 funds made available under subsection (d) to admin-
21 ister the Office.

22 “(i) TRIGGER.—No expenditure shall be made under
23 subsection (a) during any fiscal year in which the annual
24 amount appropriated for the National Institutes of Health

1 is less than the amount so appropriated for the prior fiscal
2 year.

3 **“Subtitle F—Public Health**
4 **Education and Promotion**

5 **“SEC. 2861. PUBLIC HEALTH EDUCATION AND PROMOTION.**

6 **“(a) ESTABLISHMENT OF BOARD.—**

7 **“(1) IN GENERAL.—**The Secretary shall estab-
8 lish, within the Office on Smoking and Health of the
9 Centers for Disease Control and Prevention, an
10 independent board to be known as the ‘Tobacco Use
11 Prevention and Cessation Board’ (referred to in this
12 section as the ‘Board’) to recommend that the Cen-
13 ters for Disease Control and Prevention enter into
14 contracts with or award grants to eligible public and
15 nonprofit private entities to carry out public infor-
16 mational and educational activities designed to re-
17 duce the use of tobacco products.

18 **“(2) APPOINTMENT.—**The Board shall be com-
19 posed of 9 members to be appointed by the Sec-
20 retary, of which—

21 **“(A) at least 3 such members shall be indi-**
22 **viduals who are widely recognized by the gen-**
23 **eral public for achievement in the athletic, cul-**
24 **tural, entertainment, educational, business, or**
25 **political field;**

1 “(B) at least 3 of whom shall be individ-
2 uals who are heads of a major public health or-
3 ganizations; and

4 “(C) at least 2 of whom shall be individ-
5 uals recognized as experts in the field of adver-
6 tising and marketing.

7 “(3) TERMS AND VACANCIES.—The members of
8 the Board shall serve staggered terms as determined
9 appropriate at the time of appointment by the Sec-
10 retary. Any vacancy in the Board shall not affect its
11 powers, but shall be filled in the same manner as the
12 original appointment.

13 “(4) POWERS.—

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

19 “(B) INFORMATION FROM FEDERAL AGEN-
20 CIES.—The Board may secure directly from any
21 Federal department or agency such information
22 as the Board considers necessary to carry out
23 the provisions of this section.

24 “(5) TRAVEL EXPENSES.—The members of the
25 Board shall be allowed travel expenses, including per

1 diem in lieu of subsistence, at rates authorized for
2 employees of agencies under subchapter I of chapter
3 57 of title 5, United States Code, while away from
4 their homes or regular places of business in the per-
5 formance of services for the Board.

6 “(b) ESTABLISHMENT OF PROGRAM.—The Secretary
7 shall establish a program under which the Board may rec-
8 ommend that the Centers for Disease Control and Preven-
9 tion enter into contracts with or award grants to eligible
10 public and nonprofit private entities to carry out public
11 informational and educational activities designed to reduce
12 the use of tobacco products.

13 “(c) ELIGIBILITY.—To be eligible to receive a grant
14 under this section an entity shall—

15 “(1) be a—

16 “(A) public entity or a State health depart-
17 ment; or

18 “(B) nonprofit private entity that—

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

21 “(ii) has a demonstrated record of
22 working effectively to reduce tobacco prod-
23 uct use; and

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

1 “(2) prepare and submit to the Secretary an
2 application at such time, in such manner, and con-
3 taining such information as the Secretary may re-
4 quire, including a description of the activities to be
5 conducted using amounts received under the grant
6 or contract;

7 “(3) provide assurances that amounts received
8 under the grant will be used in accordance with sub-
9 section (d); and

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

12 “(d) USE OF FUNDS.—An entity that receives a
13 grant or contract under this section shall use amounts
14 provided under the grant or contract to conduct multi-
15 media public educational or informational campaigns that
16 are designed to discourage and de-glamorize the use of to-
17 bacco products. Such campaigns shall be designed to dis-
18 courage the initiation of tobacco use by minors and en-
19 courage those using such products to quit.

20 “(e) NEEDS OF CERTAIN POPULATIONS.—In award-
21 ing grants and contracts under this section, the Board
22 shall take into consideration the needs of particular popu-
23 lations.

24 “(f) FUNDING.—

1 “(1) IN GENERAL.—There shall be made avail-
2 able from the Tobacco Settlement Trust Fund to
3 carry out this section, \$500,000,000 for each of the
4 fiscal years 1999 through 2008.

5 “(2) USE OF FUNDS.—Of the amounts made
6 available for a fiscal year under paragraph (1), the
7 Secretary shall ensure that not less than 50 percent
8 of such amounts are awarded to public entities or
9 State health departments.”.

10 (b) REPEAL OF SYNAR AMENDMENT.—Section 1926
11 of the Public Health Service Act (42 U.S.C. 300x-26) is
12 repealed.

13 **TITLE III—STANDARDS TO RE-**
14 **DUCE INVOLUNTARY EXPO-**
15 **SURE TO TOBACCO SMOKE**

16 **SEC. 301. STANDARDS TO REDUCE INVOLUNTARY EXPO-**
17 **SURE TO TOBACCO SMOKE.**

18 Section 6 of the Occupational Safety and Health Act
19 of 1970 (29 U.S.C. 655) is amended by adding at the end
20 the following:

21 “(h)(1) Not later than 12 months after the date of
22 enactment of this subsection, the Secretary shall promul-
23 gate a final standard on control of environmental tobacco
24 smoke in both industrial and nonindustrial indoor or en-
25 closed work sites. The determination of the Secretary.

1 made in accordance with subsection (b)(4), to issue the
2 rule required under this subsection, shall be based upon
3 the relevant substantial evidence in the current record,
4 considered as a whole, established pursuant to the pro-
5 posed rule addressing indoor air quality in indoor work
6 environments, published by the Secretary on April 5,
7 1994, in the Federal Register (Volume 59, Number 65,
8 beginning at page 15968). Notwithstanding the require-
9 ments of subsection (b)(5), the Secretary shall not be re-
10 quired to consider the issue of feasibility when promulgat-
11 ing the final standard required under this subsection.

12 “(2)(A) Notwithstanding any other provision of this
13 Act, a final standard under paragraph (1) shall not regu-
14 late particular workplaces, including—

15 “(i) any commercial establishment engaged pri-
16 marily in the sale of tobacco and tobacco-related
17 products; or

18 “(ii) any commercial establishment engaged pri-
19 marily in the sale of alcoholic beverages or food for
20 consumption on the premises, with the exception of
21 fast food restaurants.

22 “(B) As used in subparagraph (A)(ii), the term ‘fast
23 food restaurant’ means any restaurant or chain of res-
24 taurants in which employees primarily distribute food
25 through a customer pick-up (either at a counter or drive-

1 through window). The Secretary may promulgate regula-
2 tions to clarify this subparagraph to ensure that the in-
3 tended inclusion of workers in establishments catering
4 largely to individuals under 18 years of age is achieved.

5 “(3) Notwithstanding section 18, nothing in this sub-
6 section shall be construed to preempt or otherwise affect
7 any other Federal, State, or local law which provides pro-
8 tections from health hazards from environmental tobacco
9 smoke that are at least as stringent as those provided for
10 by the final standard under this subsection.”.

11 **TITLE IV—MISCELLANEOUS**

12 **PROVISIONS**

13 **SEC. 401. SEVERABILITY.**

14 If any provision of this Act (or an amendment made
15 by this Act) or the application thereof to any person or
16 circumstance is held invalid, the invalidity shall not affect
17 the other provisions of this Act (or amendment) and the
18 application of such provision to other persons or cir-
19 cumstances shall not be affected thereby.