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THE VICE PRESIDENT
WASHINGTON

March 12, 1998

The Honorable Tom Harkin
The Honorable John Chafee
The Honorable Bob Graham
U.S. Senate
Washington, D.C. 20510

Dear Senators Harkin, Chafee and Graham:

Congratulations on your introduction of the first bipartisan comprehensive bill to drastically reduce youth smoking which encompasses the President's five principles. I regret that I cannot be there with you today as we take another crucial step forward in the fight to protect young people from the addiction and disease of tobacco and the next big step toward writing tough anti-tobacco measures into law.

We all know that ultimately any successful bill must have broad bipartisan support. I have been pleased to see that support for tough anti-tobacco measures crosses all lines of party and politics. Now, we must seize this historic opportunity, and build on this growing coalition.

The President and I look forward to working with you and others in the Congress to enact tough anti-tobacco legislation this year. We would like to work with you to ensure that any legislation sent to the President encompasses the five principles he has outlined: (1) a price increase of up to $1.50 per pack and tough penalties if youth smoking reduction targets are not met; (2) reaffirmation of the FDA's authority to regulate tobacco products; (3) changes to the way the industry does business so it will no longer market its products to children; (4) progress toward other public health goals; and (5) protection of tobacco farmers and their communities. Further, we look forward to working with you to ensure that the revenues raised through any tobacco legislation will be invested in programs, which the President has outlined, to benefit our children.

The President and I want this Congress to be remembered as the Congress that finally protects our children from nicotine addiction and disease - and gives America the healthy kids and families we deserve.

Sincerely,

Al Gore

AG/td

March 10, 1998

The Honorable Tom Harkin
The Honorable John Chafee
The Honorable Bob Graham
United States Senate
Washington, DC 20510

Dear Senators Harkin, Chafee and Graham:

We are sorry we are not able to be with you in person as you introduce your bill, but we wanted to offer our congratulations to you for crafting a very strong, comprehensive package of tobacco reforms. Although we recognize the effort you have made to devise comprehensive legislation that would save many lives, we cannot support the specific provision providing liability protection to the tobacco companies.

We have carefully reviewed a detailed summary of your plan. While we await actual legislative language, it appears to us that if enacted, other than the provision for caps, we believe your proposal would significantly reduce tobacco use and fundamentally alter the way America deals with tobacco. It is tough medicine for a tough problem. It would set national tobacco policy on to a course that would bring down nicotine addiction and the terrible health consequences of using tobacco.

You are to be especially commended for forging a bipartisan consensus on this difficult and complex issue. For a proposal to be successful in Congress, it must have bipartisan support. Yours is the first to meet that crucial test.

Your plan correctly deals with this public health crisis in a comprehensive manner, seeking to come as close as possible at this time to the ideals expressed last July in the report of the *Advisory Committee on Tobacco Policy and Public Health*. A piecemeal approach clearly won't work. We are especially pleased that you specify an increase in the cost of tobacco products within two years. This is vitally important for reducing tobacco use by young people. Protecting the FDA's authority, protecting a State's ability to develop and enforce stronger public health measures, and other such provisions make this proposal very attractive. We understand that you will address environmental tobacco smoke and we will be pleased to work with you on that. You are also to be commended for recognizing that the United States must play an enhanced role in promoting enlightened policies toward tobacco in other countries. We have a moral imperative to lead in this area as well as protecting the public health within the United States.

We look forward to continuing to work with you as you finalize this very promising proposal. There is much to be done this year, but the announcement of your bipartisan effort is a major step forward in our long battle for a tobacco policy.

Sincerely,

C. Everett Koop, M.D., Sc.D.

David A. Kessler, M.D.

NEWS SERVICES

AMERICAN CANCER SOCIETY

For immediate release
March 12, 1998

CONTACT: Emily Smith
202/661-5710

STATEMENT OF JOHN SEFFRIN, Ph.D.
ON THE ANNOUNCEMENT OF
BIPARTISAN TOBACCO CONTROL LEGISLATION

WASHINGTON, DC, March 12, 1998 -- "I am John Seffrin, CEO of the American Cancer Society. I am here representing the millions of volunteers of the American Cancer Society to congratulate you on the comprehensive proposal you are announcing today. We support your intentions and look forward to working with you as you move to introduce *"KIDS Deserve Freedom From Tobacco Act of 1998" -- The KIDS Act.* The Society supports the enactment of comprehensive, sustainable, fully funded tobacco control legislation during the second session of Congress which focuses on public health measures. We recognize that you did not have to take this risky step and we applaud the courageous leadership you are showing with this announcement today.

Your bill is another important step toward reaching our goals which are to prevent children from taking up tobacco, dramatically decrease tobacco use among adults and reduce exposure to secondhand smoke in public places and worksites. It contains many of the provisions that the American Cancer Society believes are critical to a comprehensive national tobacco control policy. We thank you for your effort to focus on tobacco control and prevention.

The American Cancer Society believes that you have outlined some components which are critical to reducing tobacco use among children particularly the dramatic and immediate increase in the price of all tobacco products. This is the only proposal which increases the price of a pack of cigarettes by $1.50 over 2 years. The evidence is clear - raise the price of tobacco, decrease tobacco use among children and adults. This means that 1.6 million children will quit or never begin to use tobacco products.

The Kids Act classifies nicotine as a drug and tobacco products as devices. There is no retreat from FDA's current authority over these products. It gives FDA the authority to effectively monitor, regulate and enforce provisions regarding the manufacture and distribution of tobacco products without adding unnecessary and burdensome hurdles or allowing FDA additional jurisdiction which differs from other drugs and devices.

- more -

NATIONAL GOVERNMENT RELATIONS OFFICE
701 PENNSYLVANIA AVE., N.W., SUITE 650, WASHINGTON, DC 20004 • 202-661-5710 • FAX 202-661-5750

Finally, we applaud *The Kids Act* focus on public health. For any legislation to be effective in reaching the goals that the American Cancer Society outlined last summer, it must be include a comprehensive approach to tobacco prevention and control. This includes prevention, cessation, and research - focusing on those communities which are hit hardest by the devastation of tobacco addiction.

Again, we applaud the courageous leadership you are showing with this announcement today. We support the public health provisions outlined in *The Kids Act* and look forward to working with you and your future co-sponsors to make comprehensive, bipartisan national tobacco control legislation a reality in the 105th Congress. "

# # #

ENACT Statement on KIDS Deserve Freedom from Tobacco Act
U.S. Newswire
12 Mar 13:32

ENACT Statement on KIDS Deserve Freedom from Tobacco Act
To: National Desk, Health and Tobacco writers
Contact: Trish Moreis, 202-785-7900, or
Kathryn Kahler Vose, 202-296-5469,
both for Effective National Action to Control Tobacco

WASHINGTON, March 12 /U.S. Newswire/ -- Following statement was released today by the Effective National Action to Control Tobacco coalition:

Statement of the ENACT Coalition Regarding
the Introduction of KIDS Deserve Freedom From Tobacco Act

The ENACT coalition of major public health organizations applauds today's introduction of the KIDS Deserve Freedom From Tobacco Act by Senators Harkin, Chafee and Graham. These Senators have exhibited courageous leadership in crafting a strong, comprehensive, bipartisan solution to the urgent problem of tobacco use.

This is the first bipartisan proposal which, based on the summary being released today, encompasses the key public health policies that ENACT has stated must be included in any effective tobacco control legislation. We support the public health features of this proposal because of their potential to save millions of lives and, therefore, welcome it as an important step forward.

The proposal contains strong and effective provisions regarding FDA authority over tobacco sales, manufacturing and advertising; significant price increases to deter use by kids; look-back penalties if sales to youth do not decrease; a vigorous crackdown on the illegal sale of tobacco to minors; protections from secondhand smoke; disclosure of tobacco industry documents; funding for tobacco-related health and cessation research; assistance to tobacco farmers; and support for efforts to reduce tobacco use internationally.

The KIDS Act also addresses issues relating to the tobacco industry's liability. It would make the internal documents the tobacco industry has been forced to produce available to plaintiffs and the general public. It would also require the tobacco industry to make a minimum annual tort-related payment of $4 billion a year, no matter what happens in the courts.

It contains no limitations on class actions or the rights of individuals to collect full compensatory or punitive awards from the industry, nor does it protect the industry from being held accountable for future misconduct. However, it does contain an annual cap of $8 billion a year on civil liability payments for the tobacco industry in suits based on past action.

While we await the receipt of the actual legislative language, we believe that this proposal would significantly reduce tobacco use, particularly among children, and would rein in the tobacco industry. We strongly support this proposal's major features with the exception of the liability cap. ENACT believes that only a comprehensive bill that meets our minimum criteria can adequately address the complex problem of tobacco use and reduce the number of kids who start using tobacco, and the number of adults who die each year. ENACT is committed to working with Senators Harkin, Chafee and Graham, as well as all members of Congress from both parties, to enact a comprehensive, bipartisan, well-funded and sustainable tobacco control policy.

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/U.S. Newswire 202-347-2770/
03/12 13:32

Thursday March 12, 7:17 pm Eastern Time

Company Press Release

SOURCE: Tobacco Industry

Tobacco Industry Statement on Chafee-Harkin Proposal

WASHINGTON, March 12 /PRNewswire/ -- The following statement should be attributed to Steve Duchesne, tobacco industry spokesman, regarding tobacco legislation proposed by Senators Chafee and Harkin.

``The Chafee-Harkin proposal is both punitive and patently unconstitutional. It violates the First Amendment and its financial terms are not achievable. The proposal's sudden, steep price increases would devastate communities dependent upon tobacco production.

The ``look-back" provisions - which cannot constitutionally be imposed upon the industry - are confiscatory and completely out of touch with economic reality.

In short, the proposal seems designed not to resolve the outstanding issues surrounding tobacco, but to punish and even destroy the industry, the result of which would surely be the creation of a black market.

Its civil liability provisions are inadequate and would actually deny plaintiffs equal access to the courts, rewarding a lucky few at the expense of all others.

All the liability provisions of the proposed resolution are needed to assure industry payments and to avoid a race to the courthouse that will result in inequitable treatment for future claimants. Picking some liability provisions while discarding others gives the appearance of producing a compromise. In fact, it will produce failure.``

SOURCE: Tobacco Industry

Related News Categories: tobacco

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Questions or Comments?

Statement of U.S. Senator Tom Harkin (D-Iowa)
Introduction of The KIDS Act
March 12, 1998

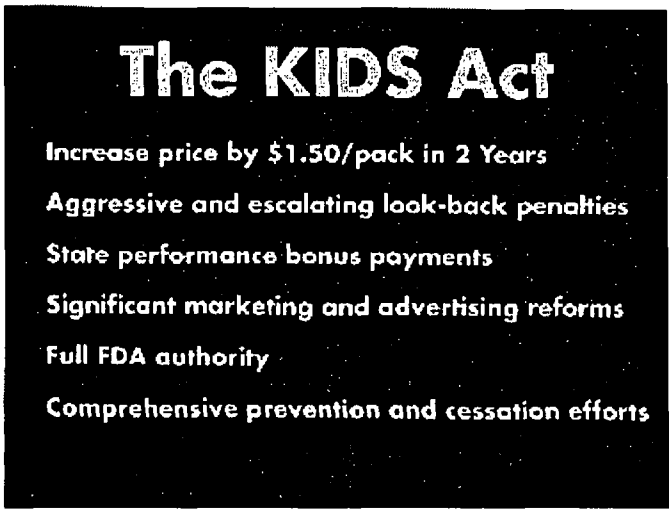
The KIDS Act - Overview | The KIDS Act - At a Glance

Good Afternoon. We are here today to announce the first bipartisan comprehensive proposal to cut youth smoking -- The Kids Deserve Freedom From Tobacco Act, or simply, The KIDS Act. Today marks the turning point in drive for tobacco reform this year.

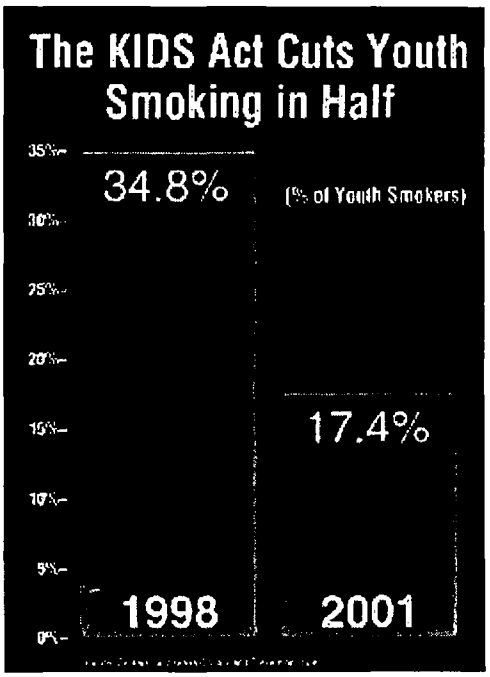
Before I get started, I want to thank my partners in this effort, John Chafee and Bob Graham. They are real heroes in the fight to save kids from tobacco. They've taken significant risks in joining this effort. And they done a terrific job in putting our proposal together. This has truly been a bipartisan team effort.

I also want thank the leaders of the public health community who have joined us today to support our efforts. They will play a critical role in shaping the course of this historic tobacco reform effort in the coming months. And their support is vital to the success of The KIDS Act. Finally, I want to thank Dr. C. Everett Koop and Dr. David Kessler, for their help and counsel to us in crafting our proposal. They sent us a very strong letter that we are releasing today.

We are here today because we face a public health crisis affecting our children. 3,000 kids start smoking every day and fully 1,000 of them will die prematurely because of it. That's the equivalent of 3 jumbo jets packed with kids crashing every day. 400,000 Americans die every of tobacco related illness at a cost of over $50 billion. And the tobacco industry has been engaged in a systematic effort of distortion and deceit to hook kids and hide the facts from the American people.



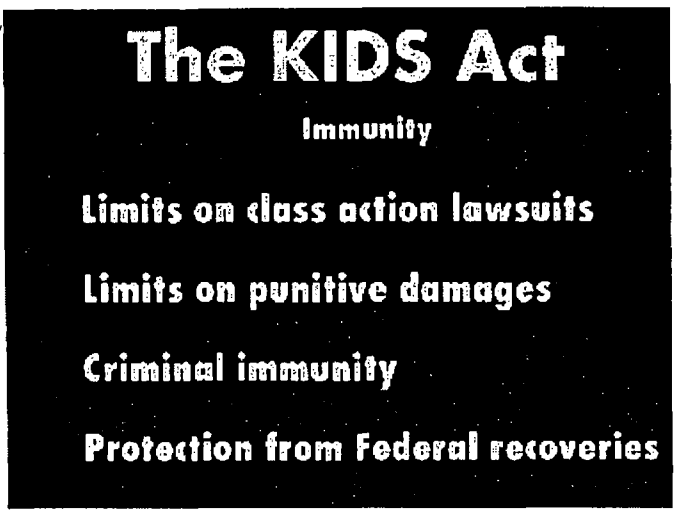
Tobacco reform is the issue of 1998. It is the crown jewel of this Congress. And passing a tobacco bill like the KIDS Act is a once and a lifetime opportunity. Unfortunately, though, the tobacco debate so far has been largely partisan. That's why we've joined arms across party lines behind the KIDS Act. We hope and believe that the introduction of our bipartisan bill will change the debate and significantly increase the odds that reforms will be made.



The KIDS Act would cut tobacco use by kids in half over the next three years through aggressive and comprehensive reforms. That's the sharpest and fastest reduction achieved by any bill proposed to date. Our goal is to cut it by at least 65 percent shortly after that.

As Drs. Koop and Kessler say in their letter, our bill is "tough medicine for a tough problem." Our proposal sends a simple message to the tobacco industry: KEEP AWAY FROM OUR KIDS. Our plan will be a very, very bitter pill for the industry. And no doubt they will criticize us. But in the end, I believe they are going to have to swallow it.

Creating a more sensible policy toward tobacco has been a goal of mine for many years. It was in 1977, over 21 years ago, that I first introduced legislation calling for repeal of the tax deductibility of tobacco advertising and marketing.



Unfortunately victories in the tobacco wars have come few and far between. In 1988, we finally changed federal law on smoking in airplanes. It was a full ten years later, and after failing one time, the Senate took its next step last September by passing the Harkin-Chafee plan to fully fund enforcement of the FDA youth ID check.

But I am more hopeful now than ever that we can pass a comprehensive plan that would once and for all change how this nation deals with tobacco and dramatically cut the number of our kids addicted to this deadly product. Our goal is to be before you 3 years from now announcing that indeed, child smoking has been cut in half. We're going to put all our energies into making that happen. And I couldn't have better partners at the start.

Return to Sen. Harkin's home page

Statement of Senator John H. Chafee
Announcing the
"KIDS Deserve Freedom From Tobacco Act"

March 12, 1998

I am very pleased to come before you today with Senators Tom Harkin and Bob Graham to unveil the "KIDS Deserve Freedom From Tobacco Act." This is the first truly bipartisan, comprehensive plan yet proposed to attack the epidemic of teen smoking which plagues our nation today.

It is also an honor to be joined here by so many distinguished leaders from the public health community who have come to demonstrate their support and enthusiasm for our proposal. Moreover, I am thrilled that the KIDS Act is the first plan to receive the support of Doctors C. Everett Koop and David Kessler -- two leaders who have done more in recent years to define this issue than anyone else.

When I think back on the major laws which have been enacted over the course of my 22 years in the Senate -- the 1983 Social Security Reforms...the Americans with Disabilities Act...the Clean Air Act Amendments of 1990...the Civil Rights Act of 1991... NAFTA...the Balanced Budget Act, to name but a few -- one thing is crystal clear: bipartisan support made each and every one of them possible.

We have a golden, perhaps singular opportunity this year to enact bipartisan legislation to address one of the most serious public health problems confronting our country: tobacco use, particularly among our children. Why do I feel so strongly about this issue?

Today alone, 3,000 young people across America will start smoking. One year from now, this daily drumbeat will translate into 1 million new smokers under the age of 18. In my home state of Rhode Island, 37% of high school children currently smoke. And, tragically, according to the Centers for Disease Control, more than 10% of Rhode Island's children will die prematurely because of tobacco use.

The fact is, adults rarely take up this deadly habit. Regrettably, it is our children who flush out tomorrow's ranks of adult smokers, and that is no coincidence. If there was ever any doubt, it is now abundantly clear that the tobacco industry preys upon our children, at the tenderest of ages, to addict and convert them into the next generation of tobacco consumers. It does so through very slick marketing and advertising strategies and messages carefully targeted to appeal to children. Can there be any doubt as to the purpose of the cartoon character, Joe Camel?

The numbers alone attest to the industry's success with this reprehensible strategy. Tobacco-related diseases kill more than 400,000 Americans each year -- one in five of our

citizens -- making it the most preventable cause of death and disability we face. Moreover, the treatment of tobacco-related illnesses costs our health care system more than $50 billion per year.

So, what would our bill do?

- It would impose stiff industry payments to force the price of cigarettes up by $1.50 per pack within the first 24 months, a step that will cut youth smoking in half within 3 years.
- It would establish the aggressive youth reduction targets recommended by Drs. Koop and Kessler, coupled with tough look-back penalties to ensure industry compliance.
- It would create a performance bonus fund to reward states for developing innovative strategies to further reduce teen smoking within their own borders.
- Finally, it would establish a Victims' Compensation Fund to guarantee that funds are available to successful claimants in the legal process. Industry contributions to the Fund would be capped at $8 billion annually.

Having said that, let me make it perfectly clear: the KIDS Act would fully preserve the rights of individuals and groups to sue the tobacco industry for damages. The tort protections embodied in the June 1997 Attorneys General tobacco settlement cannot be justified or condoned given the industry's behavior.

Though provisions of the KIDS Act starkly contrast with many features of the Attorneys General settlement proposal, we cannot let that important work go unanswered. Federal legislation is essential to build upon, strengthen, and realize the full potential of that significant agreement. I, for one, hope the 105th Congress is remembered as having acted on behalf of America's children.

The time to pass meaningful, bipartisan, comprehensive legislation is upon us. I urge my colleagues from both sides of the aisle to join with us to enact legislation to protect our children from tobacco this year.

To see an extensive summary of the bill, click here.

To see an "At-A-Glance" Summary of the KIDS Act, click here.

To return to the Main Tobacco Page, click here.

KIDS DESERVE FREEDOM FROM TOBACCO ACT OF 1998

"The KIDS Act"

At-A-Glance

Increase Cigarettes by $1.50 Per Pack in 2 Years	The KIDS Act would increase the price of a pack of cigarettes by $1.50 within 2 years: by $1.00 per pack the first year, and by an additional $0.50 the second year. The price of other tobacco products would be increased by a comparable amount. These increases would be achieved through annual industry payments totaling $20 billion the first year and $25 billion per year thereafter (indexed to inflation).
Aggressive and Escalating Look-Back Penalties	Based on recommendations made by the Koop-Kessler Advisory Look-Back Penalties Committee, the KIDS Act is designed to reduce youth smoking by at least 65% over the next ten years. Both industry-wide and company-specific penalties for failure to achieve targeted reductions in youth smoking would be assessed. These penalties could add an additional $10 billion per year to industry payments. Furthermore, all penalties would be non tax-deductible.
State Bonus Pool	The KIDS Act is the only proposal designed to reward states that meet or exceed state-specific youth reduction targets. A "performance bonus pool" would be established as an economic incentive for states and localities to develop aggressive and innovative anti-smoking strategies suited to their own individual needs and populations.
Significant Marketing and Advertising Reforms	The KIDS Act would fundamentally alter tobacco marketing and advertising practices to eliminate promotional activities aimed at children. Provisions in the Act would build on the FDA rule by adding the advertising and marketing restrictions included in the proposed June 1997 Tobacco Agreement.
Full FDA Authority	The KIDS Act would affirm the FDA's authority over tobacco products -- without any of the procedural constraints proposed by the June 1997 Tobacco Agreement. The bill would classify nicotine as a drug and tobacco products as drug delivery devices, and allow FDA to implement a "public health" standard in its review of tobacco products.

Comprehensive Prevention and Cessation Efforts	The KIDS Act would fund a comprehensive slate of public health activities to reduce tobacco use and promote cessation, including school-based activities and an intensive, sustained media campaign to "deglamorize" tobacco use among young people. Many of these initiatives would be designed and implemented at the local level to ensure responsiveness to each community's needs.
Expanded Health Research	The KIDS Act would strengthen research aimed at identifying and developing the most effective tobacco prevention and cessation strategies possible. Moreover, it would provide for a significant expansion of medical research.
Timely Payment of Awards and Settlements	To ensure that resources are readily available for the victims of tobacco- related diseases, the KIDS Act would establish a pre-funded National Victims' Compensation Fund from which court awards and settlements would be paid. Annual industry payments to the Fund would be capped at $8 billion. This cap would apply only to civil claims against past wrongdoing by the industry. The Kids Act would fully preserve the rights of individuals and groups to utilize the civil justice system to recover tobacco-related damages.
Settlement of State Suits and Castano Class Action Suits	The KIDS Act would give states the opportunity to settle their suits in exchange for funding from the National Tobacco Trust Fund established under this Act. In addition, the Castano Class Action lawsuits would be settled in return for the establishment of smoking cessation programs.
Tough Document Disclosure Requirements	The KIDS Act would require tobacco manufacturers and their agents to disclose all previously non-public, internal documents relating to the health effects, safety, and marketing of their products to children. As a precondition of eligibility for the annual cap on awards and settlements, tobacco companies would be required to waive attorney-client privilege on key documents.
Reducing Exposure to Environment Tobacco Smoke (ETS)	The KIDS Act would provide strong protections for workers and the public against exposure to ETS. In addition, our bill would place significant emphasis on reducing ETS exposure in the home through such measures as pediatric outreach, public service announcements, and a comprehensive media campaign.
	The KIDS Act would provide clear leadership on

International Leadership	international efforts to reduce tobacco use. This proposal would end U.S. Government support for tobacco promotion overseas, fund global education and anti-smuggling initiatives, and encourage our participation with other nations in efforts to strengthen tobacco policies worldwide.
Assistance for Tobacco Farming Communities	The KIDS Act would provide funding for transitional assistance to tobacco farming families, and for economic development and related assistance to tobacco-dependent communities.

Return to Sen. Harkin's home page

KIDS DESERVE FREEDOM FROM TOBACCO ACT OF 1998

"The KIDS Act"

Principles

Congress has an historic opportunity to enact legislation this year which will significantly reduce tobacco use — especially among children. Nearly one in five deaths in America today is attributable to tobacco use, making it the single most preventable cause of premature death, disease and disability facing this country. These facts compel us to act now. However, to ensure the most effective result, legislation must embody the following principles:

-- It must be bipartisan and comprehensive — not piecemeal — to ensure a fundamental and lasting change in the way tobacco products are marketed and sold in this country.

-- It must attack the youth smoking epidemic as rapidly as possible by forcing the price of cigarettes to increase by $1.50 per pack within the first two years, and providing for comparable increases in other tobacco products.

-- It must preserve the rights of individuals and groups to sue tobacco manufacturers for the damages they have caused, while at the same time establishing a framework to ensure that funds are available to cover awards and settlements secured by successful claimants.

-- It must provide incentives to states, local communities, schools, research institutions, health professionals and other stakeholders to develop innovative strategies to discourage youth smoking, and to assist adult smokers in kicking the habit.

-- It must have as its primary purpose the promotion of aggressive anti-tobacco initiatives and public health improvements, including the provision of significant new resources for medical research.

Summary

The KIDS DESERVE FREEDOM FROM TOBACCO ACT OF 1998 ("The KIDS Act") significantly improves upon and strengthens the June 1997 Attorneys General Tobacco Settlement Agreement ("June 1997 Tobacco Agreement"). The legislation would substantially reduce youth tobacco use through a comprehensive set of policy changes. These include increasing the cost of tobacco products, curtailing advertising and marketing to children, assuring appropriate industry oversight, expanding the availability of smoking cessation programs, and implementing a strong public health prevention and education strategy involving the private sector, schools, states and local communities.

I. ECONOMIC INCENTIVES

Price Increase. Public health experts agree that the single most important component of a comprehensive plan to reduce youth tobacco use is to significantly increase the price of tobacco products. Studies have shown that for every 10% increase in price, smoking is decreased at least 4% among adults and, more importantly, at least 7% among children. Therefore, our proposal would **increase the price of a pack of cigarettes by $1.50 within two years** ($1.00 the first year; $0.50 the second year). The price of other tobacco products — such as cigars and smokeless/spit tobacco — would be increased by a comparable amount. These increases would be achieved through **annual industry**

payments totaling $20 billion the first year and $25 billion per year thereafter (indexed to inflation).

Annual Youth Reduction Targets. There is clear and abundant evidence that the tobacco industry has tailored its marketing and advertising programs to attract and encourage children to smoke. Largely because of the industry's success in this regard, 3,000 children start smoking every day in America. Accordingly, the KIDS Act would make the tobacco industry accountable for promoting and achieving a significant reduction in tobacco use among children. Our proposal would set an ambitious, but realistic schedule for **reducing the rate of youth smoking by 65 percent over the next ten years.**

The schedule would follow the recommendations of the **Final Report of the Advisory Committee on Tobacco Policy and Public Health**, chaired by Dr. C. Everett Koop and Dr. David Kessler. The following targets would be set:

YEAR	REDUCTION	YEAR	REDUCTION
2	15%	7	50%
3	20%	8	55%
4	25%	9	60%
5	30%	10	65%
6	40%	Beyond	65%

(youth prevalence measured by monthly use)

Tough Look-back Penalties. The KIDS Act would impose up to an additional $10 billion per year in non tax-deductible penalties (indexed to inflation) on the tobacco industry for failure to meet these targets. Our penalty structure would impose stiff price increases if targets are not met, and unlike the June 1997 Tobacco Agreement or any other proposal, is structured to impose disproportionate penalties on the companies that addict the most youth smokers.

First, **industry-wide penalties** would be assessed for failure to meet the above targets. Second, **company-specific penalties** would be imposed to prevent individual manufacturers from achieving any financial reward from addicting children to their products. Finally, unlike the June 1997 Tobacco Agreement, the KIDS Act would provide no abatement or rebate relief to tobacco companies.

-- ***Industry-wide Penalties:*** Experts agree that to reduce youth consumption by one percentage point, a non tax-deductible penalty of at least $.02 per pack is necessary. Therefore, for every percentage point missed in a given year, the KIDS Act would assess an industry-wide penalty of $.02 per pack of cigarettes. For example, if the industry were to miss the target for a given year by 10 percentage points, the penalty assessed would be $.20 per pack, or approximately $4.8 billion. Furthermore, the KIDS Act would impose even tougher penalties on the tobacco industry for repeated failure to meet the targets: after two consecutive years of failure, it would double to $.04 per pack for each percentage point missed; after four, it would triple to $.06 per pack.

-- ***Company-specific Penalties:*** The KIDS Act would impose the most hard-hitting assurance yet proposed that tobacco manufacturers reap no profit from recruiting and addicting children. The company-specific penalty for failure to meet the youth reduction target for a year would be $1,500 for each teen smoker for which the individual company misses the target. As with the industry-wide penalties, the KIDS Act would impose even tougher penalties on individual tobacco companies for repeated failure to meet these targets. After two consecutive years of failure, the penalty would double to

$3,000 for each teen smoker for which the individual company misses the target. The penalty structure is designed to make it several times more expensive for an individual company to addict a child to a lifetime of smoking, than to never have that child start smoking its product in the first place.

No Anti-trust Immunity. Anti-trust laws are the most important safeguard we have against anti-competitive actions which hurt consumers and undermine the free market. As such, exceptions to these laws should be made only in rare circumstances, where important policy objectives outweigh the benefit of free market protections. The tobacco industry has not made a persuasive case for the granting the immunity it proposes. Therefore, unlike the June 1997 Tobacco Agreement, the KIDS Act would not extend any anti-trust exemptions to tobacco manufacturers.

State Performance Bonus Payments. The June 1997 Tobacco Agreement and pending legislative initiatives fail to provide strong economic incentives for states and communities to help decrease tobacco use among children. The KIDS Act would address this shortcoming by establishing a $500 million annual "Performance Bonus Pool" for states that meet or exceed the reduction targets within their own borders.

This would serve as an important incentive for states and localities to develop aggressive and innovative anti-smoking strategies suited to their own individual needs. State-specific baselines and targets would be developed using a standardized methodology determined by the Centers for Disease Control and Prevention. Furthermore, the KIDS Act would clarify the authority of states and local governments to encourage the enactment of stronger anti-tobacco policies.

II. CHANGING HOW TOBACCO PRODUCTS ARE SOLD

Marketing and Advertising Reforms. The tobacco industry spends an estimated $5 billion per year on marketing and promotional activities — much of it targeted to children. The KIDS Act would fundamentally alter tobacco marketing and advertising practices to eliminate this reprehensible practice.

Health Warning Labeling Reforms. Evidence suggests that the current warning label regime for tobacco product packaging fails to adequately convey to children the risks associated with tobacco use. For example, nearly half of the 8th graders in a 1993 study denied any "great risk" associated with pack-a-day smoking, despite the presence of health warnings on tobacco product packaging. Moreover, consumer research indicates that alterations in format, composition and warning label content would make them far more effective in reaching children. Thus, the KIDS Act proposes to significantly strengthen warning labels to improve their impact on the behavior of children. These messages would be regularly reviewed and updated by the Secretary of Health and Human Services to reflect changes in public awareness and attitudes about tobacco use.

Minors' Access Reforms. Illegal sales to minors and shoplifting are the primary means by which children obtain cigarettes and smokeless tobacco products. Estimates suggest that at least 516 million packs of cigarettes per year are consumed by minors, of which at least half are obtained through direct, illegal sales to minors. Shoplifting is another serious concern. In Iowa alone, more than 4 million packs of cigarettes are shoplifted every year.

The KIDS Act would address these problems by mandating that tobacco products be sold from behind store counters, banning vending machine sales, requiring retailers to verify age, and fining those vendors caught selling to minors. In addition, the KIDS Act would require states to license tobacco retailers and distributors to further ensure compliance with minors' access provisions. These reforms would build upon those developed by the U.S. Food and Drug Administration (FDA), and those contained in the June

1997 Tobacco Agreement.

Importantly, the tobacco companies would be bound by enforceable consent decrees to preclude them from challenging such restrictions in the courts, or from providing any means of support to third parties for this purpose.

State Preemption. The KIDS Act would clarify the authority of states and local governments to regulate the sale and use of tobacco products by repealing the preemption clause in existing federal law. However, it would preserve the national requirement for uniform packaging and labeling standards to ensure the free flow of interstate commerce.

At-A-Glance: Changing How Tobacco Products are Sold

Advertising	Marketing	Labeling	Minors' Access
B&W text only (except in adult-only facilities and publications)	No "trinkets & trash" (caps, jackets, bags, etc.) or proof-of- purchase clubs	Improved and updated warnings	No distribution or sales to minors under age 18
No human images or cartoon characters	No sponsorship of sporting events or other forms of entertainment	Increased Size	Photo id required up to age 27
No outdoor advertising	No paid product placement in movies, TV shows, on Internet or video games	Rotating Messages	Face-to-face sales required
No advertising on the Internet	No free samples	Statements of intended use	No single cigarettes sales
No self-service displays		Reularly reviewed and updated by HHS	No vending machines sales
			No self-service sales, except in adult-only establishments

III. OVERSIGHT AND ENFORCEMENT

FDA Authority. Given the addictive, disease-causing nature of tobacco products, full and appropriate regulation is needed. Therefore, in addition to establishing new advertising and marketing restrictions, the KIDS Act would assure that FDA has the authority to effectively monitor and regulate the

manufacture and distribution of tobacco products, promote the development of safer alternatives, and to conduct research. For these purposes, the KIDS Act would allocate $300 million over and above those provided in the annual appropriations process. Importantly, FDA would not be required to overcome special burdens or procedural hurdles in its regulatory activities — a major flaw of the June 1997 Tobacco Agreement. The KIDS Act would classify "nicotine" as a drug, and "tobacco products" as drug delivery devices (to include cigars, pipes and loose tobacco). In addition, our legislation would authorize FDA to implement a "public health" standard in its review of tobacco products.

The FDA's authority over tobacco products would be no more and no less than its authority over other drugs and devices. However, because of the addictive nature of tobacco products, and the high prevalence of their use, the KIDS Act would specifically prohibit the FDA from banning the sale of tobacco products to adults. Finally, the KIDS Act would ensure that FDA has appropriate access to tobacco industry documents to carry out its responsibilities.

Ingredient Disclosure. Evidence strongly suggests that tobacco companies design and manufacture their products to satisfy and enhance nicotine dependence. Therefore, increased information about the role and function of tobacco additives is essential to the effective regulation of such products. The KIDS Act would substantially strengthen current ingredient disclosure requirements for tobacco manufacturers. For example, each company would be required, by brand and content, to submit lists of all tobacco additives. Further, if the Secretary of Health and Human Services determines that any of these additives pose a particular risk to smokers or others exposed to tobacco smoke, this information will be fully and promptly disclosed to the public.

Reduced Risk. Much remains unknown about the feasibility and effectiveness of developing a less hazardous tobacco product. However, it is clear that tobacco manufacturers have the ability and knowledge to modify their products. Indeed, various forms of "reduced risk" nicotine delivery devices already have been introduced into the market. The KIDS Act would provide increased monitoring of new technologies and facilitate broad market availability of all innovations which effectively reduce the risk of tobacco use.

Licensing. There are approximately one million tobacco outlets in the United States, and as recently as 1994, nearly three quarters sold tobacco products to minors. These include supermarkets, newsstands, hotels, gas stations, convenience stores, and other types of vendors. In light of the number and variety of such outlets, a tobacco retailer licensing program is critical to ending the illegal sale of tobacco products to minors. The KIDS Act would establish a state licensing program for retailers and distributors of tobacco products similar to the system now in place for alcoholic beverages. Additionally, tobacco manufacturers would be required to obtain federal licenses. These licenses could be revoked for noncompliance with state or federal law.

IV. STOPPING CHILDREN FROM SMOKING BEFORE THEY START

Prevention in Communities and Schools. In addition to economic incentives, changes in tobacco product advertising and marketing, and improved oversight and enforcement, experts agree that a comprehensive slate of public health activities is needed to stop children from taking up this deadly habit. For example, research-tested school programs have proven to consistently and significantly reduce adolescent smoking. Therefore, the KIDS Act would provide $1.4 billion to states for community and school-based prevention activities. These initiatives would be designed and implemented at the local level to ensure their effectiveness.

Because minority and low-income populations suffer a disproportionate burden of tobacco-related

disease, and are among the greatest users of tobacco products, the KIDS Act would allocate a portion of the funding for community-based prevention activities to address their special needs. Funding also would be provided to assist Native American populations in their efforts to prevent and reduce youth smoking.

Counter Advertising. Research findings show that well-designed counter advertising initiatives do help to reduce teen smoking. Thus, an intensive, sustained media campaign at the state and federal level is needed to "deglamorize" tobacco use among young people. Accordingly, the KIDS Act would provide $750 million annually to fund a nationwide campaign with national, state, and local components. Preeminent advertising firms with proven expertise in the formulation of messages aimed at children would be charged with the development and implementation of "deglamorization" campaigns.

V. HELPING CURRENT SMOKERS KICK THE HABIT

Smoking Cessation. While the primary emphasis of our proposal is to reduce tobacco use among children, the more than 48 million adult Americans who currently smoke deserve and need help in kicking the habit. The KIDS Act would establish a coordinated federal and state-based initiative to increase access to, and awareness of, effective programs. When fully implemented, the legislation would provide $1.5 billion annually for programs designed to enhance existing employer-based initiatives, and those which target uninsured and under-served populations.

VI. EXPANDING RESEARCH

National Fund for Health Research. Tobacco products kill more than 400,000 Americans every year — more deaths than from AIDS, alcohol and drug abuse, car accidents, murders, suicides, and fires combined. To stop this epidemic, we must strengthen our national commitment to finding preventive measures and cures for diseases — especially those related to tobacco use, including cancer, heart disease, emphysema and stroke. Therefore, the KIDS Act would establish a National Fund for Health Research to allocate resources over and above those provided to the National Institutes of Health (NIH) in the annual appropriations process. The KIDS Act would allot $3.225 billion per year to the Fund.

Prevention and Cessation Research. While we know a great deal about reducing tobacco use, much remains unknown. Therefore, a significant expansion of prevention and cessation research is critical to the success of any comprehensive effort to reduce tobacco use. In particular, more information is needed on why people use tobacco and on what program interventions are most effective. Efforts must also be undertaken to increase our understanding of the health effects of tobacco use and exposure to second-hand smoke. The KIDS Act would provide $625 million per year for a major new research effort.

VII. HELPING THE VICTIMS OF TOBACCO-RELATED DISEASES

The KIDS Act would fully preserve the rights of individuals and groups to utilize the civil justice system to recover tobacco-related damages. Unlike the June 1997 Tobacco Agreement and some of the legislation currently pending in Congress, **the KIDS Act would not ban class action lawsuits or punitive damage awards, as the tobacco industry has sought.**

Simply put, it would provide no immunity to the tobacco industry. Given the industry's behavior, such liability protections cannot be justified or condoned. Furthermore, our legislation would provide no protections from, or limitations on criminal prosecution of the tobacco industry.

National Victims' Compensation Fund. To ensure that resources are readily available for the victims of

tobacco-related diseases, the KIDS Act would provide for the establishment of a pre-funded National Victims' Compensation Fund (the "Fund"), from which court awards and settlements would be paid. Furthermore, given the uncertainty of the legal environment surrounding tobacco litigation, an additional Contingency Reserve Account would be established within the Fund. The Fund and the annual cap would be indexed to medical inflation.

· ***Annual Base Payment:*** At the beginning of each year, the tobacco industry would make a Base Payment of $4 billion into the Fund; awards and settlements would be paid from this base amount. At the end of every year, any unobligated funds from the Base Payment would be deposited into an interest-bearing Contingency Reserve Account.

· ***Out-of-Pocket Supplement and Annual Cap:*** If awards and settlements exceed the Base Payment during any year, the industry would be liable for an additional $4 billion in out-of-pocket payments to cover the excess, for a total potential annual liability payment by the tobacco industry of $8 billion. This cap would not include payments made to states in settlement of existing Attorneys General suits, and would apply only to civil claims against past wrongdoing by the industry.

· ***Contingency Reserve Account:*** As a further protection for claimants, the KIDS Act would establish a Contingency Reserve Account (the "Account") within the Victims' Compensation Fund. Any unobligated funds from the $4 billion Base Payment would be placed in the Account. For example, if awards and settlements paid in the first year amounted to $1 billion, the remaining $3 billion would be deposited into the Account. Funds in the Account would build up substantially in the early years as settlements and awards during this period are expected to be relatively small. For any year in which liability awards and settlements exceed $8 billion, the Account would be drawn down to make the excess payments. In the unlikely event that awards and settlements ever deplete the Account in any year, unpaid claims would be rolled over and paid from the Base Payment at the beginning of the following year.

If the Account accumulates a balance of $20 billion, the Attorney General, in conjunction with the Secretary of Health and Human Services, would determine whether to continue to deposit excess funds therein, or to redirect those funds to anti-smoking and other public health activities authorized under the legislation.

· ***Small Claimant Protection:*** Under the KIDS Act, individuals and smaller classes of individuals would be given priority in disbursements from the Fund to ensure that large awards or settlements, paid to 3rd parties for example, would not deny smaller claimants timely payment of their claims.

· ***Settlement of State Suits and Castano Class Action:*** Forty state Attorneys Generals have brought suits against the tobacco industry to recover costs incurred for tobacco-related illnesses and other damages. The KIDS Act would provide states the opportunity to settle their suits in exchange for funding from the National Tobacco Trust Fund established under this Act. In addition, the Castano Class Action lawsuits would be settled in return for the establishment of smoking cessation programs.

VIII. ENDING TOBACCO INDUSTRY SECRECY

For decades, to the severe detriment of the public health, the tobacco industry has concealed evidence of the consequences of tobacco use and deliberately misled the public. Moreover, tobacco manufacturers have broadly misused the doctrine of attorney-client privilege to cloak industry documents and research in a veil of secrecy. The KIDS Act would require tobacco companies and their agents — as a precondition of eligibility for the annual cap on awards and settlements — to waive attorney-client

privilege for key documents relating to the health effects, safety, and marketing of their products to children. This reform would assist the victims of tobacco-related diseases in securing judgments against tobacco companies, and out-of-court settlements, without the traditional barriers and costs associated with document discovery.

As a further step to assure full disclosure of appropriate documents, the annual liability cap would not apply to any awards or settlements stemming from a case in which it is found that documents were not disclosed, as required under this Act, by the industry or a specific manufacturer.

FDA to Obtain Needed Documents. Tobacco companies would be required to turn over to the FDA all documents the agency deemed necessary to carry out its regulatory responsibilities — including assessing the health effects of nicotine and other tobacco ingredients, the design and development of "less hazardous" or "safer" tobacco products, as well as the advertising, marketing and promotion of such products.

Document Depository. The establishment and administration of a document depository would be competitively awarded to a nongovernmental entity with no connections to the tobacco industry. Tobacco manufacturers and their agents would be required to submit all documents discovered through any litigation to this depository, along with an index in such form that would make the documents easily accessible and usable by plaintiffs and researchers.

IX. TRANSITION ASSISTANCE TO FARMERS

Changes in national policy regarding tobacco products, and the expected decline in their consumption, will have ramifications for farming families, workers and communities in tobacco growing regions. The KIDS Act would provide $15 billion for compensation, income support and transitional assistance to tobacco farming families, and for economic development and related assistance in tobacco-dependent communities.

X. ASSURING CLEAN INDOOR AIR

Our knowledge is growing daily on the deleterious effects of exposure to Environmental Tobacco Smoke (ETS) in the home, the workplace and other public facilities. Annually, 3,000 Americans die of lung cancer caused by second-hand smoke, and 15,000 children under 18 months of age are hospitalized with respiratory infections related to ETS exposure.

Thus, the KIDS Act would provide strong protections for workers and the public against exposures to ETS. In addition, our bill would place significant emphasis on reducing ETS exposure in the home -- including such measures as pediatric outreach, public service announcements, and comprehensive media campaigns.

The KIDS Act would also require Congress to comply with the "no smoking" policies already in place throughout the Executive Branch. Furthermore, legislation would not preempt states and local governments from establishing even more stringent policies to protect individuals from ETS.

XI. STOPPING SMUGGLING AND SHOWING WORLD LEADERSHIP

In some countries, significant increases in cigarette prices have resulted in large-scale smuggling operations. Contraband cigarette trafficking can occur both at national borders and between states with wide disparities in tobacco excise taxes. Since 1992, this criminal activity has increased by more than

500% in the United States. As the price of cigarettes increases as a result of tobacco settlement legislation, actions must be taken to prevent the wide availability of contraband cigarettes.

Tough Anti-Smuggling Initiative. In addition to licensing all tobacco product sellers in the stream of commerce, the KIDS Act would allocate $300 million per year to implement an aggressive, well-coordinated anti-smuggling program aimed at stopping contraband tobacco products from entering or being sold in the United States. The bill would facilitate substantial coordination of international, federal and state law enforcement activities, as well as providing new resources to expedite the deployment of innovative anti-smuggling technologies.

Harsh New Penalties to Stop Smuggling. To further deter contraband trafficking in tobacco products, the KIDS Act would also establish harsh new criminal and monetary penalties for individuals convicted of such offenses.

World Leadership. The World Health Organization (WHO) currently estimates that tobacco use causes three million deaths per year worldwide — a number which is expected to increase exponentially as the U.S.-based tobacco industry intensifies its global marketing and promotional activities. By the year 2023, WHO projects tobacco-related mortalities will jump to ten million, with nearly 70 percent occurring in developing countries. This troubling trend is expected to accelerate with the enactment of strong anti-tobacco policies in the United States.

Unlike the June 1997 Tobacco Agreement, our bill would provide clear leadership on international efforts to curb tobacco use. The KIDS Act would terminate all support for tobacco promotion overseas by the United States Government, provide $100 million per year to fund global education efforts, and encourage America's participation with other nations in efforts to harmonize tobacco policies worldwide.

XII. INDUSTRY CONSENT DECREES

Voluntary, but legally-binding consent decrees — signed by federal and state governments and tobacco manufacturers — are critical to the success of any comprehensive tobacco legislation aimed at significantly reducing tobacco use by children. Without these decrees, key provisions of such a law could be delayed by lengthy legal challenges. To help avoid this problem, the KIDS Act would require tobacco companies to sign legally-binding consent decrees in order to receive the benefits of the annual liability cap established under the legislation. Violation of any of the terms of the consent decrees would result in exclusion of that company from the annual liability cap. Among other things, the consent decrees — which would be enforceable by the U.S. Attorney General or State Attorneys General through federal and state courts — would commit the companies to abide by the following agreements:

-- Not to directly or indirectly bring or support legal challenges to the implementation of any aspect of the KIDS Act, including existing or future FDA regulatory authority, document disclosure, youth look-back survey methodology and penalties, and advertising and marketing restrictions;

-- To pay and fully pass through the cost of annual industry payments and industry-wide look-back penalties, assuring that the price of cigarettes would increase by at least $1.50 per pack over 2 years, with comparable increases for other tobacco products;

-- All reforms related to the labeling, sale, advertising and promotion of tobacco products intended by this Act;

-- Not to directly, or through contractors, lobby federal, state or local governments against any provision of this Act;

-- To only do business with those retailers and distributors in full compliance with all provisions of this Act;

-- To dissolve the Tobacco Institute and other existing trade associations;

-- Not to advertise over the Internet; and,

-- To comply also with all of the marketing and advertising restrictions in both the FDA regulation and the proposed June 1997 Tobacco Agreement.

XIII. ANNUAL TOBACCO PAYMENTS AND SPENDING

Industry Payments: The KIDS Act would require a non-deductible industry payment of $10 billion immediately upon enactment. That payment would be used by states and local communities, as well as the federal government, to begin implementation of the strong anti-tobacco measures authorized under the Act.

One year after enactment, the tobacco industry would make a payment of $20 billion to the National Tobacco Trust Fund. Each year thereafter, the industry payment would be $25 billion, indexed to inflation.

Payments to States: As under the June 1997 Tobacco Agreement, $193.5 billion over 25 years would be reserved for state use. Of those funds, 50% would be distributed to states to use for improving early education, child care, or other purposes at their discretion. The remaining 50% would be allocated to the states for the purposes of tobacco prevention, education, and cessation, and for the expansion of existing public health or children's health programs.

Additionally, $500 million per year would be awarded from the Performance Bonus Pool to states which meet or exceed their Annual Youth Reduction Targets.

Payments for National Efforts: Under the KIDS Act, $4 billion of the industry's yearly payment would be directed to the National Victims' Compensation Fund as the Annual Base Payment. Remaining industry payments would be used exclusively for national anti-tobacco and public health purposes.

Return to Sen. Harkin's home page

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March 12, 1998

Clinton Backs Senate Tobacco Bill

A.P. INDEXES: TOP STORIES | NEWS | SPORTS | BUSINESS | TECHNOLOGY | ENTERTAINMENT

Filed at 12:07 p.m. EST

By The Associated Press

WASHINGTON (AP) -- President Clinton today announced his support for a bipartisan tobacco bill in the Senate that would raise the price of cigarettes by up to $1.50 a pack over the next decade as part of a comprehensive approach to cut teen smoking.

Clinton praised a bill being introduced today by three senators as meeting all his goals for a tough line against the tobacco companies. The sponsors are Sens. Bob Graham, D-Fla., Tom Harkin, D-Iowa, and John Chafee, R-R.I.

``It is a good, tough bill,'' Clinton said in a speech to the National Association of Attorneys General. ``I hope it gets wide support. This legislation will save lives.''

In recent days, the Clinton administration has stepped up its public push for a comprehensive tobacco bill based on a legal settlement the industry reached last June with 40 state attorneys general.

Clinton, with Attorney General Janet Reno at his side, thanked the state law enforcement officials for taking on the tobacco companies.

``Be proud of what you have done,'' he said. ``But bring all of your influence to bear on the Congress.''

Clinton praised the attorneys general for fighting what once looked like a losing battle. He said their efforts brought to light incriminating industry documents earlier than would otherwise have been the case.

``Thirty years of deception. Now Congress must act to bring it to an end,'' the president said. ``Thirty years of manipulation. Congress must act to bring it to an end. And it must act now.''

Under the June deal, the industry would be given immunity from further government lawsuits and private class-action suits. In return, the cigarette manufacturers would restrain their advertising and marketing and pay $368 billion to settle punitive damage claims based on past industry practices.

The tobacco industry weighed in Wednesday with a multimillion-dollar campaign of full-page ads in major newspapers, urging public support for the June settlement and the legal protections it provides.

Senate leaders have tried to tame the unwieldy issue by directing Sen. John McCain, chairman of the Senate Commerce Committee, to decide which parts of a half-dozen tobacco bills should be included in the measure that ultimately goes to the Senate floor for a vote.

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Business

Published Monday, March 9, 1998

Clinton Likely To OK Tobacco Bill

By LAURIE KELLMAN / Associated Press Writer

WASHINGTON (AP) -- The White House this week is expected to give its approval to a bipartisan Senate **tobacco** bill that sponsors hope will lead to a compromise on granting the industry immunity from most lawsuits.

White House and Senate aides close to the issue said Monday that a bill to be introduced this week by Sens. John Chafee, R-R.I., Tom Harkin, D-Iowa, and Bob Graham, D-Fla., meets President Clinton' s objectives for a national **tobacco** policy. However, there is still disagreement over how the government should spend money from a **tobacco** deal.

" It' s the first bipartisan bill consistent with the overarching principles that the president sent out, " said a White House official familiar with a Capitol Hill meeting on Monday between the administration and the bill sponsors.

Clinton has listed five objectives for any sweeping **tobacco** legislation: reducing teen **smoking**, affirming the federal government' s authority to regulate **tobacco** products, limiting **tobacco** marketing, helping smokers quit and protecting **tobacco** farmers from bankruptcy.

The administration last month said it would issue a de facto endorsement to virtually any measure that meets those goals.

The White House last month also gave its approval to a measure sponsored by Sen. Kent Conrad, D-N.D., but that bill has yet to attract a Republican sponsor.

The aides said the Chafee-Harkin-Graham bill in its present form would impose a $1.50-per-pack cigarette price increase over two years, the highest of any measure introduced so far. The bill would maintain the right for large numbers of people to sue and set up a capped fund to pay successful plaintiffs. **Tobacco** companies would pay $4 billion a year into the fund, whether or not it is used, and be held accountable for $4 billion more per year if awards exceed the fund total.

Under the June settlement, companies cannot be forced to pay more than $5 billion a year to plaintiffs. Plaintiffs, however, cannot collect more than $1 million in a single year -- if their awards exceed that amount, it rolls over to the next year until it is paid off.

That deal, which must be ratified by Congress, would end 40 state lawsuits if the **tobacco** industry pays $368 billion over 25 years and agree to steer advertising away from kids. In exchange, the **tobacco** industry would be immune from class action lawsuits, which companies and farmers say would protect them from bankruptcy.

If the **tobacco** industry does not get that lawsuit protection, company executives say they will refuse to change **tobacco** advertising.

The Chafee-Harkin-Graham measure does not meet the industry' s demands, a **tobacco** spokesman said.

" The distance between $5 billion and $8 billion is a lot of money, " said industry spokesman Scott Williams. " It leaves the industry vulnerable to be swamped by class action cases, and they are unpredictable. You can' t take that risk."

The administration' s de facto endorsement reflects the momentum the **tobacco** debate has gained over the last week.

Clinton has stepped up his call for Congress to enact a national **tobacco** policy this year, and Senate Republican leaders have consolidated their efforts to pass one under a bill sponsored by Commerce Committee Chairman John McCain, R-Ariz.

But many members say the intensified discussions aren' t enough to overcome disagreements on virtually every issue between and among lawmakers of both parties.

For example, Clinton, House Republicans and Senate Republicans cannot agree on how to spend money gained from **tobacco** company payments even if a deal is passed.

Clinton has said he wants that money spent on a variety of anti-**smoking** programs. House Speaker Newt Gingrich said last week that he wants it used for tax cuts. On Monday, Senate Majority Leader Trent Lott weighed in, saying he wants to spend it on some of Clinton' s priorities, but not new government programs.

" If there is some legislation on this, " Lott told reporters, " it should not be used as a cookie jar for the president on all of his lovely lollipop spending programs that don' t relate to such a settlement."

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Business

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- DRAFT -

March 12, 1998

Senator Tom Harkin
Senator John Chafee
Senator Bob Graham
U.S. Senate
Washington, D.C. 20501

Dear Senators Harkin, Chafee and Graham:

Congratulations on your introduction of the first bipartisan comprehensive bill to drastically reduce youth smoking which encompasses the President's five principles. I regret that I cannot be there with you today as we take another crucial step forward in the fight to protect young people from the addiction and disease of tobacco and the next big step toward writing tough anti-tobacco measures into law.

We all know that ultimately any successful bill must have broad bipartisan support. I have been pleased to see that support for tough anti-tobacco measures crosses all lines of party and politics. Now, we must seize this historic opportunity , and build on this growing coalition.

The President and I look forward to working with you and other in the Congress to enact tough anti-tobacco legislation this year. We would like to work with you to ensure that any legislation sent to the President encompasses the five principles he has outlined: (1) a price increase of up to $1.50 per pack and tough penalties if youth smoking reduction targets are not met; (2) reaffirmation of the FDA's authority to regulate tobacco products; (3) changes to the way the industry does business so it will no longer market its products to children; (4) progress toward other public health goals; and (5) protection of tobacco farmers and their communities. Further, we look forward to working with you to ensure that the revenues raised through any tobacco legislation will be invested in programs to benefit our children which the President has outlined.

The President and I want this Congress to be remembered as the Congress that finally protects our children from nicotine addiction and disease - and gives American the healthy kids and families we deserve.

Sincerely,

Al Gore

United States Senate

WASHINGTON, DC 20510

March 10, 1998

The Honorable Bill Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear President Clinton:

Shortly, we expect to put forward a bipartisan, comprehensive proposal to dramatically reduce tobacco use by our Nation's children. We have united across party lines because we believe Congress has an unprecedented and perhaps singular opportunity to enact tobacco reform legislation this year. Nearly one in five deaths in America today is attributable to tobacco use, making it the most preventable cause of premature death, disease and disability facing this country. In this regard, we strongly believe legislation must embody the following principles:

- It must be bipartisan and comprehensive -- not piecemeal -- to ensure a fundamental and lasting change in the way tobacco products are marketed and sold in this country;

- It must attack the youth smoking epidemic as rapidly as possible by forcing the price of cigarettes to increase by $1.50 per pack within the first two years, and providing for comparable increases in other tobacco products;

- It must preserve the rights of individuals and groups to sue tobacco manufacturers for the damages they have caused, while at the same time establishing a framework to ensure that funds are available to cover awards and settlements secured by successful claimants;

- It must provide full and appropriate authority to the Food and Drug Administration and others to oversee tobacco products and assure compliance with all reforms;

- It must provide strong incentives to states, local communities, schools, research institutions, health professionals and other stakeholders to develop innovative strategies to discourage youth smoking, and to assist adult smokers in kicking the habit; and,

- It must have as its primary purpose the promotion of aggressive anti-tobacco initiatives and public health improvements, including the provision of significant new resources for medical research.

We look forward to working with the Administration and our colleagues on a bipartisan, bicameral basis to make certain that comprehensive legislation meeting these principles is enacted this year. Every day we delay, another 3,000 children start smoking – 1,000 of whom will die prematurely from tobacco-related disease. We know you share our commitment to resolving this public health crisis, and look forward to working with you toward this end.

Sincerely,

Tom Harkin
U.S. Senator

John Chafee
U.S. Senator

Bob Graham
U.S. Senator

Identical Letters to: The Honorable Trent Lott
The Honorable Tom Daschle
The Honorable Newt Gingrich
The Honorable Richard Gephardt

Statement on Harkin-Chafee
March 10, 1998

Today, Senators Harkin, Chafee, and Graham proposed the first comprehensive, bipartisan tobacco legislation that will dramatically reduce youth smoking. This proposal includes the five elements I said last September I would insist upon: (1) a price increase of up to $1.50 per pack and tough penalties if youth smoking reduction targets are not met; (2) reaffirmation of the FDA's authority to regulate tobacco products; (3) changes to the way the industry does business so it will no longer market its products to children; (4) progress toward other public health goals; and (5) protection of tobacco farmers and their communities.

I strongly support this effort, although I look forward to working with the Senators as they draft their legislation to ensure that their spending plans include the child care and education proposals I included in my budget. Their bipartisan proposal is an important step toward enacting comprehensive tobacco legislation that will save the lives of our children.

DRAFT 3/9

Statement on Harkin-Chafee
March XX, 1998

Today, Senators Harkin, Chafee, and Graham proposed the first comprehensive, bipartisan tobacco legislation that will dramatically reduce youth smoking. This proposal includes the five elements I said last September I would insist upon: (1) a price increase of up to $1.50 per pack and tough penalties if youth smoking reduction targets are not met; (2) reaffirmation of the FDA's authority to regulate tobacco products; (3) changes to the way the industry does business so it will no longer market its products to children; (4) progress toward other public health goals; and (5) protection of tobacco farmers and their communities.

I strongly support this effort, but look forward to working with the Senators to revise their spending plans to include the child care and education proposals I included in my budget. With their bipartisan efforts, the goal of comprehensive tobacco legislation is today a step closer to reality.

Comments on Harkin/Chafee Draft Summary of the Tobacco Bill

Major spending items specified in the Budget that are not included in the Harkin/Chafee summary:

- Cancer clinical trials ($.8 billion over five years)
- Children's Health Outreach ($.9 billion over five years)

Other major concerns/observations concerning the draft summary include:

- **Class size** ($7.3 billion over five years) is not specifically referenced, but Harkin's staff informally indicate that their mention of "early education" as one of the uses of a $19.4 billion/5 yr. state block grant for child care, etc., means class size. To meet the Administration's goals for class size, Harkin/Chafee need to make a more specific reference, and probably need to fence the class size spending off specifically.

- **Pre-Emption** -- The current FDA tobacco regulation pre-empts any state or local requirement that is different from, or in addition to, these federal regulations. Harkin/Chafee would repeal this pre-emption, which looks inconsistent with the President's principles regarding FDA regulatory authority.

- **FDA Authority** -- The proposal prohibits FDA from banning the sale of tobacco products to adults, which may not be consistent with the President's principle regarding FDA.

- **Anti-smuggling** efforts ($1.5 billion over five years) should be self-financing.

Items in the draft summary which could be easily amended to reflect the Budget's priorities:

- **NIH/Cancer Research** -- NIH is funded at $16 billion over 5 years not $17 billion, as the Budget proposes -- but Chafee/Harkin do not favor cancer research with a 65% increase over 5 years, as the Budget does. Harkin/Chafee provide more funding than the Budget in the first few years and less than the Budget in the outyears. The spending stream for NIH could be changed to reflect the Budget's stream of funding for NIH, and cancer research should be specifically favored.

- **CDC Surveys** -- The draft summary does not specifically provide needed funds for CDC surveillance (to do the lookback penalty survey), but a portion of the funds designated for prevention/cessation research ($3.1 billion over 5 years) could be specified for this activity.

- **Medicaid Outreach** -- The draft summary does not specifically provide funding for Medicaid children's health outreach programs proposed in the Budget. A portion of the funds designated for State grants for prevention/cessation/public health programs/children's health ($19.4 billion over 5 years) could be specified for this activity.

- **FDA Funding** -- The draft summary states that " the KIDS Act would ensure that FDA has adequate financial resources...to carry out its responsibilities." However, no specific funds

are provided to FDA. FDA's funding level needs to be high enough to allow FDA to accomplish its regulatory mission, as specified in the Budget.

Comments on Harkin/Chafee Draft Summary of the Tobacco Bill

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Other major concerns/observations concerning the draft summary include:

- **Class size** ($7.3 billion over five years) is not specifically referenced, but Harkin's staff informally indicate that their mention of "early education" as one of the uses of a $19.4 billion/5 yr. state block grant for child care, etc., means class size. To meet the Administration's goals for class size, Harkin/Chafee need to make a more specific reference, and probably need to fence the class size spending off specifically.

- **Pre-Emption** -- The current FDA tobacco regulation pre-empts any state or local requirement that is different from, or in addition to, these federal regulations. Harkin/Chafee would repeal this pre-emption, which looks inconsistent with the President's principles regarding FDA regulatory authority.

- **FDA Authority** -- The proposal prohibits FDA from banning the sale of tobacco products to adults, which may not be consistent with the President's principle regarding FDA.

- **Anti-smuggling** efforts ($1.5 billion over five years) should be self-financing.

Items in the draft summary which could be easily amended to reflect the Budget's priorities:

- **NIH/Cancer Research** -- NIH is funded at $16 billion over 5 years not $17 billion, as the Budget proposes -- but Chafee/Harkin do not favor cancer research with a 65% increase over 5 years, as the Budget does. Harkin/Chafee provide more funding than the Budget in the first few years and less than the Budget in the outyears. The spending stream for NIH could be changed to reflect the Budget's stream of funding for NIH, and cancer research should be specifically favored.

- **CDC Surveys** -- The draft summary does not specifically provide needed funds for CDC surveillance (to do the lookback penalty survey), but a portion of the funds designated for prevention/cessation research ($3.1 billion over 5 years) could be specified for this activity.

- **Medicaid Outreach** -- The draft summary does not specifically provide funding for Medicaid children's health outreach programs proposed in the Budget. A portion of the funds designated for State grants for prevention/cessation/public health programs/children's health ($19.4 billion over 5 years) could be specified for this activity.

- **FDA Funding** -- The draft summary states that " the KIDS Act would ensure that FDA has adequate financial resources...to carry out its responsibilities." However, no specific funds

are provided to FDA. FDA's funding level needs to be high enough to allow FDA to accomplish its regulatory mission, as specified in the Budget.

HHS/FDA Comments

TO: Jim O'HARA
COMMENTS ON HARKIN/CHAFEE

Kids Deserve Freedom from Tobacco Act of 1998

Licensing- The bill proposes a state and or federal licensing scheme. We are probably going to recommend that there be, at a minimum, federal registration of all manufacturers, distributors and retailers by BATF. An administrative finding (FDA) of a set number of violations by a retailer would trigger the loss of registration status and the right to sell tobacco products. A state licensing system would provide additional protection.

Consent decrees- DOJ is still studying.

Additional advertising restrictions- ban on Internet, no human images or cartoons, no outdoor advertising, etc. The questionable constitutionality of these provisions warrants caution in including them without limitations.

Preclassification of nicotine and tobacco products as Class II products- This would limit FDA's ability to adequately address new products- all would immediately be included in this one category and FDA could not request the types of evidence that Class III requires.

Reduction of risk standard- FDA is authorized by this bill to implement this new standard. FDA prefers a "best public health result" test.

Prohibition of FDA banning sale of tobacco products to adults- If this has no limitation on time, this would be a significant limitation.

Comments on Harkin Precis:

Page 4 (State Preemption): Need to clarify that repealing the preemption would be the existing Federal statute that preempts states from regulating cigarette advertisements as they relate to health claims; the current Federal statute doesn't really pertain to "sale and use" as described in the precis. The recommendation of lifting the existing preemption is an important one, consistent with Koop Kessler and IOM recommendations, that is why they should get it as accurate as possible.

Page 6 (Ingredient Disclosure): The proposal could be stronger in its public disclosure requirements. It currently allows for public disclosure only if the Secretary determines that the risk poses a hazard. This is similar to the Massachusetts statute. However, one cigarette company, Liggett, has agreed to more complete public disclosure and is printing a partial list of ingredients on all Liggett cigarette cartons. I think any statute should be as least as disclosing as Liggett currently is.

Page 7 (National Fund for Health Research): It's not clear how (or if) this fund relates to the Research Fund for America.

Page 9 (FDA to Obtain Needed Documents): There is a broader need for documents than just for FDA, particularly to devise prevention and counter-marketing efforts.

Page 9 (Assuring Clean Indoor Air): It's not clear how they are going to deal with the hospitality industry.

Page 11 (Payment to States): We might want to be careful about limiting state dollars to "the expansion of existing public health" programs. Because of the historic underfunding of public health, this would be a good opportunity to put in place new prevention programs that currently don't exist, such as those to prevent cardiovascular disease or cancer.

KIDS DESERVE FREEDOM FROM TOBACCO ACT OF 1998
"The KIDS Act"

Principles

Congress has an historic opportunity to enact legislation this year which will significantly reduce tobacco use — especially among children. Nearly one in five deaths in America today is attributable to tobacco use, making it the single most preventable cause of premature death, disease and disability facing this country. These facts compel us to act now. However, to ensure the most effective result, legislation must embody the following principles:

- It must be bipartisan and comprehensive — not piecemeal — to ensure a fundamental and lasting change in the way tobacco products are marketed and sold in this country.
- It must attack the youth smoking epidemic as rapidly as possible by forcing the price of cigarettes to increase by $1.50 per pack within the first two years, and providing for comparable increases in other tobacco products.
- It must preserve the rights of individuals and groups to sue tobacco manufacturers for the damages they have caused, while at the same time establishing a manageable framework to ensure timely payment of awards and settlements to claimants.
- It must provide incentives to states, local communities, schools, research institutions, health professionals and other stakeholders to develop innovative strategies to discourage youth smoking, and to assist adult smokers in kicking the habit.
- It must have as its primary purpose the promotion of aggressive anti-tobacco initiatives and public health improvements, including the provision of significant new resources for medical research.

Summary

The KIDS Deserve Freedom from Tobacco Act of 1998 ("The KIDS Act") significantly improves upon and strengthens the June 1997 Attorneys General Tobacco Settlement Agreement ("June 1997 Tobacco Agreement"). The legislation would substantially reduce youth tobacco use through a comprehensive set of policy changes. These include increasing the cost of tobacco products, curtailing advertising and marketing to children, assuring appropriate industry oversight, expanding the availability of smoking cessation programs, and implementing a strong public health prevention and education strategy involving the private sector, schools, states and local communities.

I. ECONOMIC INCENTIVES

Price Increase. Public health experts agree that the single most important component of a comprehensive plan to reduce youth tobacco use is to significantly increase the price of tobacco products. Studies have shown that for every 10% increase in price, smoking is decreased at least 4% among adults and, more importantly, by at least 7% among children. Therefore, our proposal would **increase the price of a pack of cigarettes by $1.50 within two years** ($1.00 the first year; $0.50

the second year). The price of other tobacco products – such as cigars and smokeless/spit tobacco – would be increased by a comparable amount. These increases would be achieved through **annual industry payments totaling $20 billion the first year and $25 billion per year thereafter** (indexed to inflation).

Annual Youth Reduction Targets. There is clear and abundant evidence that the tobacco industry has tailored its marketing and advertising programs to attract and encourage children to smoke. Largely because of the industry's success in this regard, 3,000 children start smoking every day in America. Accordingly, the KIDS Act would make the tobacco industry accountable for promoting and achieving a significant reduction in tobacco use among children. Our proposal would set an ambitious, but realistic schedule for **reducing the rate of youth smoking by 65 percent over the next ten years.**

The schedule would follow the recommendations of the **Final Report of the Advisory Committee on Tobacco Policy and Public Health,** chaired by Dr. C. Everett Koop and Dr. David Kessler. The following targets would be set:

YEARS	REDUCTION	YEARS	REDUCTION
2	15%	7	50%
3	20%	8	55%
4	25%	9	60%
5	30%	10	65%
6	40%	Beyond	65%

(youth prevalence measured by monthly use)

Tough Look-back Penalties. The KIDS Act would impose up to an additional $10 billion per year in non tax-deductible penalties (indexed to inflation) on the tobacco industry for failure to meet these targets. Our penalty structure would impose stiff price increases if targets are not met, and unlike the June 1997 Tobacco Agreement or any other proposal, would impose charges on the companies that addict the most youth smokers.

First, **industry-wide penalties** would be assessed for failure to meet the above targets. Second, **company-specific penalties** would be imposed to prevent individual manufacturers from achieving any financial reward from addicting children to their products. Finally, unlike the June 1997 Tobacco Agreement, the KIDS Act would provide no abatement or rebate relief to tobacco companies.

- ***Industry-wide Penalties:*** Experts agree that to reduce youth consumption by one percentage point, an increase of at least $.02 per pack is necessary. Therefore, for every percentage point missed in a given year, the KIDS Act would assess an industry-wide penalty of $.02 per pack of cigarettes. For example, if the industry were to miss the target for a given year by 10 percentage points, the penalty assessed would be $.20 per pack, or approximately $4.8

billion. Furthermore, the KIDS Act would impose even tougher penalties on the tobacco industry for repeated failure to meet the targets: after two consecutive years of failure, it would double to $.04 per pack for each percentage point missed; after four, it would triple to $.06 per pack.

- ***Company-specific Penalties:*** The KIDS Act would impose the most hard-hitting assurance yet proposed that tobacco manufacturers reap no profit from recruiting and addicting children. The company-specific penalty for failure to meet the youth reduction target for a year would be $1,500 for each teen smoker for which the individual company misses the target. The penalty structure is designed to make it several times more expensive for an individual company to addict a child to a lifetime of smoking, than to never have that child start smoking their brand in the first place.

No Anti-trust Immunity. Anti-trust laws are the most important safeguard we have against anti-competitive actions which hurt consumers and undermine the free market. As such, exceptions to these laws should be made only in rare circumstances, where important policy objectives outweigh the benefit of free market protections. The tobacco industry has not made a persuasive case for the grant of immunity it proposes. Therefore, unlike the June 1997 Tobacco Agreement, the KIDS Act would not extend any anti-trust exemptions to tobacco manufacturers.

State Performance Bonus Payments. The June 1997 Tobacco Agreement and pending legislative initiatives fail to provide strong economic incentives for states and communities to help decrease tobacco use among children. The KIDS Act would address this shortcoming by establishing a $500 million annual "Performance Bonus Pool" for states that meet or exceed the reduction targets within their own borders.

This would serve as an important incentive for states and localities to develop aggressive and innovative anti-smoking strategies suited to their own individual needs. State-specific baselines and targets would be developed using a standardized methodology determined by the Centers for Disease Control and Prevention. Furthermore, the KIDS Act would clarify the authority of states and local governments to encourage the enactment of stronger anti-tobacco policies.

II. CHANGING HOW TOBACCO PRODUCTS ARE SOLD

Marketing and Advertising Reforms. The tobacco industry spends an estimated $5 billion per year on marketing and promotional activities -- much of it targeted to children. The KIDS Act would fundamentally alter tobacco marketing and advertising practices to eliminate this reprehensible practice.

Health Warning Labeling Reforms. Evidence suggests that the current warning label regime for tobacco product packaging fails to adequately convey to children the risks associated with tobacco use. For example, nearly half of the 8th graders in a 1993 study denied any "great risk" associated with pack-a-day smoking, despite the presence of health warnings on tobacco product packaging. Moreover, consumer research indicates that alterations in format, composition and warning label content would make them far more effective in reaching children. Thus, the KIDS Act proposes to

significantly strengthen warning labels to improve their impact on the behavior of children. These messages would be regularly reviewed and updated by the Secretary of Health and Human Services to reflect changes in public awareness and attitudes about tobacco use.

Minors' Access Reforms. Illegal sales to minors and shoplifting are the primary means by which children obtain cigarettes and smokeless tobacco products. Estimates suggest that at least 516 million packs of cigarettes per year are consumed by minors, of which at least half are obtained through direct, illegal sales to minors. Shoplifting is another serious concern. In Iowa alone, more than 4 million packs of cigarettes are shoplifted every year.

The KIDS Act would address these problems by mandating that tobacco products be sold from behind store counters, banning vending machine sales, requiring retailers to verify age, and fining those vendors caught selling to minors. In addition, the KIDS Act would require states to license tobacco retailers and distributors to further ensure compliance with minors' access provisions. These reforms would build upon those developed by the U.S. Food and Drug Administration (FDA), and those contained in the June 1997 Tobacco Agreement.

Importantly, the tobacco companies would be bound by enforceable consent decrees to preclude them from challenging such restrictions in the courts, or from providing any means of support to third parties for this purpose.

State Preemption. The KIDS Act would clarify the authority of states and local governments to regulate the sale and use of tobacco products by repealing the preemption clause in existing federal law. However, it would preserve the national requirement for uniform packaging and labeling standards to ensure the free flow of interstate commerce.

At-A-Glance: Changing How Tobacco Products are Sold

Advertising	Marketing	Labeling	Minors' Access
√ B&W text only (except in adult-only facilities and publications)	√ No "trinkets & trash" (caps, jackets, bags, etc.) or proof-of-purchase clubs	√ Improved and updated warnings	√ No distribution or sales to minors under age 18
√ No human images or cartoon characters	√ No sponsorship of sporting events or other forms of entertainment	√ Increased size	√ Photo id required up to age 27
√ No outdoor advertising	√ No paid product placement in movies, TV shows, on Internet or video games	√ Rotating messages	√ Face-to-face sales required
√ No advertising on the Internet	√ No free samples	√ Statements of intended use	√ No single cigarettes sales
√ No self-service displays		√ Regularly reviewed and updated by HHS	√ No vending machines sales
			√ No self-service sales, except in adult-only establishments

III. OVERSIGHT AND ENFORCEMENT

FDA Authority. Given the addictive, disease-causing nature of tobacco products, full and appropriate regulation is needed. Therefore, in addition to establishing new advertising and marketing restrictions, the KIDS Act would assure that FDA has the authority to effectively monitor and regulate the manufacture and distribution of tobacco products, promote the development of safer alternatives, and to conduct research. Importantly, FDA would not be required to overcome special burdens or procedural hurdles in its regulatory activities — a major flaw of the June 1997 Tobacco Agreement. The KIDS Act would classify "nicotine" as a drug, and "tobacco products" as Class II drug delivery devices (to include cigars, pipes and loose tobacco). In addition, our legislation would authorize FDA to implement a "reduction in risk" standard in its review of tobacco products.

The FDA's authority over tobacco products would be no more and no less than its authority over other drugs and devices. However, because of the addictive nature of tobacco products, and the high prevalence of their use, the KIDS Act would specifically prohibit the FDA from banning the sale of tobacco products to adults. Finally, the KIDS Act would ensure that FDA has adequate financial resources, and appropriate access to tobacco industry documents, to carry out its responsibilities.

Ingredient Disclosure. Evidence strongly suggests that tobacco companies design and manufacture their products to satisfy and enhance nicotine dependence. Therefore, increased information about the role and function of tobacco additives is essential to the effective regulation of such products. The KIDS Act would substantially strengthen current ingredient disclosure requirements for tobacco manufacturers. For example, each company would be required, by brand and content, to submit lists of all tobacco additives. Further, if the Secretary of Health & Human Services determines that any of these additives pose a particular risk to smokers or others exposed to tobacco smoke, this information will be fully and promptly disclosed to the public.

Reduced Risk. Much remains unknown about the feasibility and effectiveness of developing a less hazardous tobacco product. However, it is clear that tobacco manufacturers have the ability and knowledge to modify their products. Indeed, various forms of "reduced risk" nicotine delivery devices already have been introduced into the market. The KIDS Act would provide increased monitoring of new technologies and facilitate broad market availability of all innovations which effectively reduce the risk of tobacco use.

Licensing. There are approximately one million tobacco outlets in the United States, and as recently as 1994, nearly three quarters sold tobacco products to minors. These include supermarkets, newsstands, hotels, gas stations, convenience stores, and other types of vendors. In light of the number and variety of such outlets, a tobacco retailer licensing program is critical to ending the illegal sale of tobacco products to minors. The KIDS Act would establish a state licensing program for retailers and distributors of tobacco products similar to the system now in place for alcoholic beverages. Additionally, tobacco manufacturers would be required to obtain federal licenses. These licenses could be revoked for noncompliance with state or federal law.

IX. STOPPING CHILDREN FROM SMOKING BEFORE THEY START

Prevention in Communities and Schools. In addition to economic incentives, changes in tobacco product advertising and marketing, and improved oversight and enforcement, experts agree that a comprehensive slate of public health activities is needed to stop children from taking up this deadly habit. For example, research-tested school programs have proven to consistently and significantly reduce adolescent smoking. Therefore, the KIDS Act would provide $1.4 billion to states for community and school-based prevention activities. These initiatives would be designed and implemented at the local level to ensure their effectiveness.

Minorities Because minority and low-income populations suffer a disproportionate burden of tobacco-related disease, and are among the greatest users of tobacco products, the KIDS Act would allocate a portion of the funding for community-based prevention activities to address their special needs.

Counter Advertising. Research findings show that well-designed counter advertising initiatives do help to reduce teen smoking. Thus, an intensive, sustained media campaign at the state and federal level is needed to "deglamorize" tobacco use among young people. Accordingly, the KIDS Act would provide $750 million annually to fund a nationwide campaign with national, state, and local components. Preeminent advertising firms with proven expertise in the formulation of messages aimed at children would be charged with the development and implementation of "deglamorization"

campaigns.

V. HELPING CURRENT SMOKERS KICK THE HABIT

Smoking Cessation. While the primary emphasis of our proposal is to reduce tobacco use among children, the more than 48 million adult Americans who currently smoke deserve and need help in kicking the habit. The KIDS Act would establish a coordinated federal and state-based initiative to increase access to, and awareness of, effective programs. When fully implemented, the legislation would provide $1.5 billion annually for programs designed to enhance existing employer-based initiatives, and those which target uninsured and under-served populations.

VI. EXPANDING RESEARCH

National Fund for Health Research. Tobacco products kill more than 400,000 Americans every year — more deaths than from AIDS, alcohol and drug abuse, car accidents, murders, suicides, and fires combined. To stop this epidemic, we must strengthen our national commitment to finding preventive measures and cures for diseases — especially those related to tobacco use, including cancer, heart disease, emphysema and stroke. Therefore, the KIDS Act would establish a National Fund for Health Research to provide resources over and above those provided to the National Institutes of Health (NIH) in the annual appropriations process.

The KIDS Act would allot $3.225 billion per year to the Fund. Each year, amounts within the Fund would be distributed to each of the NIH Institutes and Centers in accordance with the allocation formulas employed in the annual appropriations process. The KIDS Act would direct the Institutes and Centers receiving money from the Fund to give appropriate priority to tobacco-related research.

Prevention and Cessation Research. While we know a great deal about reducing tobacco use, much remains unknown. Therefore, a significant expansion of prevention and cessation research is critical to the success of any comprehensive effort to reduce tobacco use. In particular, more information is needed on why people use tobacco and on what program interventions are most effective. Efforts must also be undertaken to increase our understanding of the health effects of tobacco use and exposure to second-hand smoke. The KIDS Act would provide $625 million per year for a major new research effort.

VII. HELPING THE VICTIMS OF TOBACCO-RELATED DISEASES

Predictability for Tobacco Companies, Not Liability Concessions. The KIDS Act would fully preserve the rights of individuals and groups to utilize the civil justice system to recover tobacco-related damages. Unlike the June 1997 Tobacco Agreement and some of the legislation currently pending in Congress, **the KIDS Act would not ban class action lawsuits or punitive damage awards, as the tobacco industry has sought; simply put, it would provide no immunity to the tobacco industry.** Given the industry's behavior, such liability protections cannot be justified or condoned.

However, to ensure the timely payment of awards and settlements to claimants, the KIDS Act would establish an annual cap on civil liability payments. This cap would not include payments made to states in settlement of existing Attorneys General suits, and would apply only to civil claims against past wrongdoing by the industry. **Our legislation would provide no protections from, or limitations on criminal prosecution of the tobacco industry.**

States which choose to accept funds under the KIDS Act would be required to discontinue their suits. In addition, the Castano Class Action lawsuits would be settled in return for the establishment of smoking cessation programs.

National Victims' Compensation Fund. To ensure that resources are readily available for the victims of tobacco-related diseases, the KIDS Act would provide for the establishment of a pre-funded National Victims' Compensation Fund (the "Fund"), from which court awards and settlements would be paid. Furthermore, given the uncertainty of the legal environment surrounding tobacco litigation, an additional Contingency Reserve Account would be established within the Fund. The Fund and the annual cap would be indexed to medical inflation.

- ***Annual Base Payment:*** At the beginning of each year, the tobacco industry would make a Base Payment of $4 billion into the Fund; awards and settlements would be defrayed from this base amount. At the end of every year, any unobligated funds from the Base Payment would be deposited into an interest-bearing Contingency Reserve Account.

- ***Out-of-Pocket Supplement:*** If awards and settlements exceed the Base Payment during any year, the industry would be liable for an additional $4 billion in out-of-pocket payments to cover the excess.

- ***Contingency Reserve Account:*** Any unobligated funds from the $4 billion Base Payment would be placed in the Contingency Reserve Account (the "Account") within the Victims' Compensation Fund. For example, if awards and settlements paid in the first year amounted to $1 billion, the remaining $3 billion would be deposited into the Account. Funds in the Account would build up substantially in the early years as settlements and awards during this period are expected to be relatively small. For any year in which liability awards and settlements exceed $8 billion, the Account would be drawn down to make the excess payments. In the unlikely event that awards and settlements ever deplete the Account in any year, unpaid claims would be rolled over and paid from the Base Payment at the beginning of the following year.

  If the Account accumulates a balance of $20 billion, the Attorney General, in conjunction with the Secretary of Health & Human Services, would determine whether to continue to deposit excess funds therein, or to redirect those funds to anti-smoking and other public health activities authorized under the legislation.

- ***Small Claimant Protection:*** Under the KIDS Act, individuals and smaller classes of individuals would be given priority in disbursements from the Fund to ensure that large awards or settlements, paid to 3rd parties for example, would not deny smaller claimants timely payment of their claims.

VIII. ENDING TOBACCO INDUSTRY SECRECY

For decades, to the severe detriment of the public health, the tobacco industry has concealed evidence of the consequences of tobacco use and deliberately misled the public. Moreover, tobacco manufacturers have broadly misused the doctrine of attorney-client privilege to cloak industry documents and research in a veil of secrecy. The KIDS Act would require tobacco companies and their agents — as a precondition of eligibility for the annual cap on awards and settlements -- to waive attorney-client privilege for key documents relating to the health effects, safety, and marketing of their products to children. This reform would assist the victims of tobacco-related diseases in securing judgments against tobacco companies, and out-of-court settlements, without the traditional barriers and costs associated with document discovery.

As a further step to assure full disclosure of appropriate documents, the annual liability cap would not apply to any awards or settlements stemming from a case in which it is found that documents were not disclosed, as required under this Act, by the industry or a specific manufacturer.

FDA to Obtain Needed Documents. Tobacco companies would be required to turn over to the FDA all documents the agency deemed necessary to carry out its regulatory responsibilities — including assessing the health effects of nicotine and other tobacco ingredients, the design and development of "less hazardous" or "safer" tobacco products, as well as the advertising, marketing and promotion of such products.

Document Depository. The establishment and administration of a document depository would be competitively awarded to a nongovernmental entity with no connections to the tobacco industry. Tobacco manufacturers and their agents would be required to submit all documents discovered through any litigation to this depository, along with an index in such form that would make the documents easily accessible and usable by plaintiffs and researchers.

IX. TRANSITION ASSISTANCE TO FARMERS

Changes in national policy regarding tobacco products, and the expected decline in their consumption, will have ramifications for farming families, workers and communities in tobacco growing regions The KIDS Act would provide $15 billion for compensation, income support and transitional assistance to tobacco farming families, and for economic development and related assistance in tobacco-dependent communities.

X. ASSURING CLEAN INDOOR AIR

Our knowledge is growing daily on the deleterious effects of exposure to Environmental Tobacco Smoke (ETS) in the home, the workplace and other public facilities. Annually, 3,000 Americans die of lung cancer caused by second-hand smoke, and 15,000 children under 18 months of age are hospitalized with respiratory infections related to ETS exposure.

Thus, the KIDS Act would provide strong protections for workers and the public against exposures to ETS. In addition, our bill would place significant emphasis on reducing ETS exposure in the

home -- including such measures as pediatric outreach, public service announcements, and comprehensive media campaigns.

The KIDS Act would also require Congress to comply with the "no smoking" policies already in place throughout the Executive Branch. Furthermore, legislation would not preempt states and local governments from establishing even more stringent policies to protect individuals from ETS.

XI. STOPPING SMUGGLING AND SHOWING WORLD LEADERSHIP

Anti-Smuggling. In some countries, significant increases in cigarette prices have resulted in large-scale smuggling operations. Contraband cigarette trafficking can occur both at national borders and between states with wide disparities in tobacco excise taxes. Since 1992, this criminal activity has increased by more than 500% in the United States.

As the price of cigarettes increases as a result of tobacco settlement legislation, actions must be taken to prevent the wide availability of contraband cigarettes. The KIDS Act would allocate $300 million annually to strengthen federal anti-smuggling activities, both domestically and internationally. These measures would curtail the availability of "black market" tobacco products and ensure that economic and other policies aimed at reducing tobacco use have the chance to work.

World Leadership. The World Health Organization (WHO) currently estimates that tobacco use causes three million deaths per year worldwide — a number which is expected to increase exponentially as the U.S.-based tobacco industry intensifies its global marketing and promotional activities. By the year 2023, WHO projects tobacco-related mortalities will jump to ten million, with nearly 70 percent occurring in developing countries. This troubling trend is expected to accelerate with the enactment of strong anti-tobacco policies in the United States.

Unlike the June 1997 Tobacco Agreement, our bill would provide clear leadership on international efforts to curb tobacco use. The KIDS Act would terminate all support for tobacco promotion overseas by the United States Government, provide $100 million per year to fund global education efforts, and encourage America's participation with other nations in efforts to harmonize tobacco policies worldwide.

XII. INDUSTRY CONSENT DECREES

Voluntary, but legally-binding consent decrees -- signed by federal and state governments and tobacco manufacturers — are critical to the success of any comprehensive tobacco legislation aimed at significantly reducing tobacco use by children. Without these decrees, key provisions of such a law could be delayed by lengthy legal challenges. To help avoid this problem, the KIDS Act would require tobacco companies to sign legally-binding consent decrees in order to receive the benefits of the annual liability cap established under the legislation. Violation of any of the terms of the consent decrees would result in exclusion of that company from the annual liability cap. Among other things, the consent decrees — which would be enforceable by the U.S. Attorney General or State Attorneys General through federal and state courts — would commit the companies to abide

by the following agreements:

- Not to directly or indirectly bring or support legal challenges to the implementation of any aspect of the KIDS Act, including existing or future FDA regulatory authority, document disclosure, youth look-back survey methodology and penalties, and advertising and marketing restrictions;

- To pay and fully pass through the cost of annual industry payments and look-back penalties, assuring that the price of cigarettes would increase by at least $1.50 per pack over 2 years, with comparable increases for other tobacco products;

- All reforms related to the labeling, sale, advertising and promotion of tobacco products intended by this Act;

- Not to directly, or through contractors, lobby federal, state or local governments against any provision of this Act;

- To only do business with those retailers and distributors in full compliance with all provisions of this Act;

- To dissolve the Tobacco Institute and other existing trade associations;

- Not to advertise over the Internet; and,

- To comply also with all of the marketing and advertising restrictions in both the FDA regulation and the proposed June 1997 Tobacco Agreement.

XIII. ANNUAL TOBACCO PAYMENTS AND SPENDING

Industry Payments: The KIDS Act would require a non-deductible industry payment of $10 billion immediately upon enactment. That payment would be used by states and local communities, as well as the federal government, to begin implementation of the strong anti-tobacco measures authorized under the Act.

One year after enactment, the tobacco industry would make a payment of $20 billion to the National Tobacco Trust Fund. Each year thereafter, the industry payment would be $25 billion, indexed to inflation.

Payments to States: As under the June 1997 Tobacco Agreement, $193.5 billion over 25 years would be reserved for state use. Of those funds, 50% would be distributed to states to use for improving early education, child care, or other purposes at their discretion. The remaining 50% would be allocated to the states for the purposes of tobacco prevention, education, and cessation, and for the expansion of existing public health or children's health programs.

Additionally, $500 million per year would be awarded from the Performance Bonus Pool to states

which meet or exceed their Annual Youth Reduction Targets.

Payments for National Efforts: Under the KIDS Act, $4 billion of the industry's yearly payment would be directed to the National Victims' Compensation Fund as the Annual Base Payment. Remaining industry payments would be used exclusively for national anti-tobacco and public health purposes.

THIS IS A WORKING DRAFT DOCUMENT: PLEASE DO NOT CITE, QUOTE OR DISTRIBUTE THIS DOCUMENT

Dated: March 6, 1998
10:00 a.m.

KIDS Deserve Freedom from Tobacco Act of 1998

"The KIDS Act"

PRINCIPLES

We face an historic opportunity to enact legislation that will significantly reduce tobacco use – especially among children. Nearly one in every five deaths in the United States is attributable to tobacco use; it remains the single most preventable cause of premature death, disease and disability in this Nation. These facts compel us to act now, but to achieve meaningful results legislation must be consistent with the following principles:

- Legislation must be bipartisan, aggressive, and comprehensive, not piecemeal.
- Funds derived through legislation must be used to promote anti-tobacco initiatives and to stimulate public health improvements -- not to finance other unrelated activities.
- Legislation must preserve and protect the rights of individuals and groups *and* optimize enactment and effective implementation of important reforms.

SUMMARY

The KIDS Deserve Freedom from Tobacco Act of 1998 ("The KIDS Act") significantly improves upon and strengthens the June 1997 Attorneys General tobacco settlement proposal. The legislation would substantially reduce youth tobacco use through a comprehensive set of policy changes, including increasing the cost of tobacco products, curtailing advertising and marketing, assuring appropriate industry oversight, expanding the availability of smoking cessation programs, and the implementation of a comprehensive public health prevention and education strategy involving the private sector, schools, states and local communities.

I. ECONOMIC INCENTIVES

Price Increases. Public health experts agree that the single most important component of a comprehensive plan to reduce youth tobacco use is to significantly increase the cost of tobacco products. Studies have shown that for every 10% increase in price, smoking is decreased at least 4% among adults and, more importantly, by at least 7% among children. Therefore, our proposal would **increase the price of a pack of cigarettes by $1.50 within 2 years: by $1.00 per pack the first year, and by an additional $0.50 the second year.** The price of other tobacco products, such as cigars and smokeless/spit tobacco, would be increased by a comparable amount. These increases would be achieved through annual industry payments totaling $20 billion* the first year and $25 billion* per year thereafter (indexed to inflation).

Annual Youth Reduction Targets. There is clear and abundant evidence that the tobacco industry has successfully tailored its marketing and advertising programs to attract and encourage

* numbers are subject to budget re-estimation

children to smoke. Largely because of the industry's aggressive efforts, 3,000 children start smoking every day in America. Accordingly, the KIDS Act would make the tobacco industry accountable for promoting and achieving a significant reduction in tobacco use among children. Our proposal would set an ambitious, but realistic schedule for **reducing the rate of youth smoking by 65 percent over the next ten years.**

The schedule would follow the recommendations of the Final Report of the Advisory Committee on Tobacco Policy and Public Health, chaired by Dr. C. Everett Koop and Dr. David Kessler. Measuring youth prevalence on a monthly basis, the following targets would be established:

YEAR	REDUCTION	YEAR	REDUCTION
2	15%	7	50%
3	20%	8	55%
4	25%	9	60%
5	30%	10	65%
6	40%	Beyond	65%

Tough Look-back Penalties. The KIDS Act would subject tobacco companies to as much as an additional $10 billion per year in penalties, indexed to inflation, if they fail to meet the annual youth reduction targets described above. First, **industry-wide penalties** would be assessed for failure to meet the annual youth reduction targets. These surcharges would further increase the price per pack of cigarettes. Second, **company-specific penalties** would prevent individual companies from realizing any financial benefits from addicting children to their products. These penalties, based on youth market share, would be assessed for failure to meet the annual youth reduction targets. Third, unlike the June 1997 Attorneys General settlement proposal, the KIDS Act would contain no abatement or rebate provision for tobacco companies. Finally, all industry-wide and company-specific penalties would be non tax-deductible.

- *Industry-wide Penalties:* Experts agree that to reduce youth consumption by one percentage point an increase of at least $.07 per pack is necessary. Therefore, for every percentage point missed in a given year, the KIDS Act would assess an industry-wide penalty of $.02 per pack of cigarettes. For example, if the industry were to miss the target for a given year by 10 percentage points, the penalty assessed would be $.20 per pack, or approximately $4.8 billion. Furthermore, the KIDS Act would impose even tougher penalties on the tobacco industry for repeated failure to meet the targets. After two consecutive years of failure, the penalty would double to $.04 per pack for each percentage point missed; after four consecutive years, the penalty would triple to $.06 per pack.

- *Company-specific Penalties:* The KIDS Act would impose the most hard-hitting assurance yet proposed that tobacco manufacturers will reap no profit from recruiting and addicting

* numbers are subject to budget re-estimation

children. For each percentage point missed by an individual company in a given year, the penalty assessed would be approximately $1,500 per teen smoker. This penalty would represent 3 times the estimated net present value profit gained from each youth smoker, over a lifetime of smoking.

Anti-trust Issues. Anti-trust laws are the most important safeguard against anti-competitive actions that hurt consumers and undermine the integrity of free market. As such, exceptions from those laws should be made only in rare instances, where paramount policy objectives outweigh the importance of fundamental free market values. The tobacco industry has not sufficiently demonstrated such overwhelming need. Therefore, unlike the June 1997 settlement proposal, the KIDS Act does not grant any anti-trust exemptions to the tobacco industry.

State Performance Bonus Payments. The June 1997 proposed settlement and pending legislative initiatives fail to provide strong economic incentives for states and communities to help decrease tobacco use among children. The KIDS Act would address this shortcoming by establishing a $500 million* annual "performance bonus pool" for states that meet or exceed the reduction targets within their own borders. This would serve as an important incentive for states and localities to develop aggressive and innovative anti-smoking strategies suited to their own individual needs and populations. State-specific baselines and targets would be developed using a standardized methodology determined by the Centers for Disease Control and Prevention. Furthermore, the KIDS Act would clarify the authority of states and local governments to encourage the enactment of stronger anti-tobacco policies.

II. CHANGING HOW TOBACCO PRODUCTS ARE SOLD

Marketing and Advertising Reforms. The tobacco industry spends an estimated $5 billion per year for highly effective and sophisticated advertising, marketing and promotion campaigns. The KIDS Act would fundamentally alter tobacco marketing and advertising practices to eliminate promotional activities aimed at children.

Health Warning Labeling Reforms. Children underestimate the serious health risks of tobacco use. In a 1993 study of 8th graders, nearly half denied any "great risk" associated with pack-a-day smoking, despite the presence of health warnings on tobacco product packaging. Consumer research indicates that the impact of health warnings is dependent on format, composition and content. Therefore, the KIDS Act would significantly strengthen warning labels to effectively convey the risks of using tobacco products. These messages would be regularly reviewed and updated by the Secretary of Health and Human Services to reflect changes in public awareness and attitudes about tobacco use.

Minor's Access Reforms. Illegal sale of tobacco products to children, and shoplifting are the primary means by which children obtain cigarettes and smokeless tobacco products. Estimates suggest that at least 516 million packs of cigarettes per year are consumed by minors, of which at least half are sold illegally to minors. In Iowa alone, more than 4 million packs of cigarettes are shoplifted every year. The KIDS Act would address these problems by mandating that tobacco

* numbers are subject to budget re-estimation

products be sold from behind store counters, banning vending machine sales, requiring retailers to verify age, and fining those caught selling to minors. In addition, the KIDS Act would require states to license tobacco retailers and distributors to further ensure compliance with minors' access provisions.

These reforms would build upon those developed by the U.S. Food and Drug Administration (FDA), and the state Attorneys General in their June 1997 proposed settlement with the tobacco industry. The tobacco companies would be bound by enforceable consent decrees that would preclude them from challenging such restrictions in the courts or from providing any means of support to third parties for this purpose.

At-A-Glance: Changing How Tobacco Products are Sold

Advertising	Marketing	Labeling	Minors' Access
✓ Black-and-White text only (except in adult-only facilities and publications)	✓ No "trinkets & trash" (caps, jackets, bags, etc.) or proof-of-purchase clubs	✓ Improved and updated warnings	✓ No distribution or sales to minors under age 18
✓ No human images or cartoon characters	✓ No sponsorship of sporting events or other forms of entertainment	✓ Increased size	✓ Photo id required up to age 27
✓ No outdoor advertising	✓ No paid product placement in movies, TV shows, on Internet or video games	✓ Rotating messages	✓ Face-to-face sales required
✓ No advertising on the Internet	✓ No free samples	✓ Statements of intended use	✓ No single cigarettes sales
✓ No self-service displays		✓ Regularly reviewed and updated by HHS	✓ No vending machines sales
			✓ No self-service sales, except in adult-only establishments

State Preemption. The KIDS Act would clarify the authority of states and local governments to regulate the sale and use of tobacco products by repealing the preemption clause in existing Federal law. However, the KIDS Act would retain the national requirement for uniform packaging and labeling standards to ensure the free flow of interstate commerce.

* numbers are subject to budget re-estimation

III. OVERSIGHT AND ENFORCEMENT

FDA Authority. Given the addictive and disease-causing nature of tobacco products, there is a clear need for full and appropriate regulation. Therefore, in addition to imposing new advertising and marketing restrictions, the KIDS Act would assure that the FDA has the authority needed to effectively monitor, regulate, and enforce provisions regarding the manufacture and distribution of such products, promote the development of safer alternatives, and conduct research. Importantly, FDA would not be required to overcome special burdens or procedural hurdles as set forth in the June 1997 proposed settlement. The KIDS Act would classify nicotine as a drug, and tobacco products as Class II drug delivery devices, including cigars, pipes and loose tobacco in the definition of tobacco products. In addition, our legislation would authorize FDA to implement a "reduction in risk" standard in its review of tobacco products.

The FDA's authority over tobacco products would be no more and no less than its authority over other drugs and devices. However, because of the public health risks associated with an outright ban, the KIDS Act would specifically prohibit the FDA from banning the sale of tobacco products to adults. Finally, the KIDS Act would ensure that FDA has adequate financial resources, and appropriate access to tobacco industry documents to carry out its responsibilities.

Ingredient Disclosure. Increasingly, evidence demonstrates that tobacco manufacturers design their products to produce or satisfy nicotine dependence. Therefore, information about any role and function of substances added to tobacco products, both intended or inadvertent, is essential for effective regulation. The KIDS Act would strengthen current disclosure requirements for tobacco manufacturers. For example, each company would be required to submit lists of tobacco additives, by brand and content. Further, if the Secretary determines any of these additives to be of particular risk to smokers or others exposed to tobacco smoke, she would make this information available to the public.

Reduced Risk. Much remains unknown about the feasibility and effectiveness of developing a less hazardous tobacco product. However, tobacco manufacturers have the ability and knowledge to modify their product. Indeed, various forms of "reduced risk" nicotine delivery devices already have been introduced into the market. The KIDS Act would provide increased monitoring of new technology, both in research and development, to facilitate broad market availability and the application of any technology that would effectively reduce the risk of tobacco use.

Licensing. There are approximately one million tobacco outlets in the United States, and as recently as 1994, nearly three quarters sold tobacco products to minors. These outlets include a wide variety of stores, such as groceries, newsstands, hotels, gas stations and convenience stores. In light of the number and variety of vendors, a tobacco retailer licensing program is critical to ending the illegal sale of tobacco products to minors. The KIDS Act would establish a state licensing program for retailers and distributors. Additionally, our legislation would require the federal licensing of tobacco manufacturers. These licenses could be revoked for noncompliance of state and federal law.

* numbers are subject to budget re-estimation

IV. STOPPING CHILDREN FROM SMOKING BEFORE THEY START

Prevention in Communities and Schools. In addition to economic incentives, changes in tobacco product advertising and marketing, and improved oversight and enforcement, experts agree that a comprehensive slate of public health activities is needed to stop children from taking up this deadly habit. For example, studies have shown that research-tested school programs can produce consistent and significant reductions in adolescent smoking. Therefore, the KIDS Act would provide $1.4 billion* to states for community and school-based prevention activities. These initiatives would be designed and implemented at the local level to ensure responsiveness to each community's needs.

Because minority and low-income populations suffer a disproportionate burden of tobacco-related disease, and are among the greatest users of tobacco products, the KIDS Act would allocate a portion of the funding for community-based prevention activities to address their needs.

Counter Advertising. An intensive, sustained media campaign is needed to "deglamorize" tobacco use among young people. Research findings show that well-designed counter advertising can help reduce teen smoking. Accordingly, the KIDS Act would provide $750 million* annually to fund a nationwide campaign with national, state, and local components. Preeminent advertising firms with proven expertise in the formulation of messages aimed at children would be charged with the development and implementation of "deglamorization" campaigns.

V. HELPING CURRENT SMOKERS TO KICK THE HABIT

Smoking Cessation. While the primary emphasis of our proposal is to reduce tobacco use among children, the more than 48 million adult Americans who currently smoke deserve and need help in kicking the habit. This legislation would establish a coordinated federal and state-based initiative to increase access to and awareness of effective programs. When fully funded, the KIDS Act would provide $1.5* billion annually for programs designed to enhance existing employer-based initiatives, and that target the uninsured and under-served.

VI. EXPANDING RESEARCH

National Fund for Health Research. Tobacco products kill more than 400,000 Americans every year -- more deaths than from AIDS, alcohol, car accidents, murders, suicides, drugs and fires combined. To stop this epidemic, we must strengthen our national commitment to finding preventive measures and cures for diseases, especially those related to tobacco use, including cancer, heart disease, emphysema and stroke. Therefore, the KIDS Act would establish a National Fund for Health Research to provide resources over and above those provided to the National Institutes of Health (NIH) in the annual appropriations process.

* numbers are subject to budget re-estimation

The KIDS Act would allot $3.225 billion* per year to the Fund. Each year, amounts within the Fund would be allotted to each of the NIH Institutes and Centers, to be distributed according to current allocations already received through the annual appropriations process. The KIDS Act would direct the Institutes and Centers receiving money from the Fund to give appropriate priority to tobacco-related research.

Prevention and Cessation Research. While we know a great deal about reducing tobacco use, much remains unknown. Therefore, a significant expansion of prevention and cessation research is critical to the success of any comprehensive effort to reduce tobacco use. In particular, more information is needed on why people use tobacco and on what program interventions are most effective. Efforts also are needed to expand the science base on the health effects of tobacco use and on exposure to second-hand smoke. The KIDS Act would provide $625 million* per year for a major new research effort.

VII. HELPING THE VICTIMS OF TOBACCO-RELATED DISEASES

Predictability for Tobacco Companies, Not Liability Concessions. The KIDS Act would fully preserve the rights of individuals and groups to utilize the civil justice system to recover tobacco-related damages. Unlike the June 1997 Attorneys General tobacco settlement proposal, and some of the legislation currently pending in Congress, our bill would not ban class action lawsuits or punitive damage awards, as the tobacco industry has sought. **Simply put, the KIDS Act would not provide the tobacco industry with any immunity.** Given the industry's behavior, such liability protections cannot be justified or condoned.

However, to enable the industry to meet its financial obligations with respect to tort liability in an orderly and predictable manner, the KIDS Act would provide for an annual cap on civil liability payments. This cap would not include payments made to states in settlement of existing Attorneys General suits, and would apply only to civil claims against *past* wrongdoing by the industry.

States that choose to accept funds from the National Settlement would be required to discontinue their suits. In addition, the Castano Class Action lawsuits would be settled in return for the establishment of smoking cessation programs. **Our legislation would provide no protections or limitations on criminal liability for the tobacco industry.**

National Victims' Compensation Fund. To ensure that resources are readily available for victims, the KIDS Act would provide for the establishment of a pre-funded National Victims' Compensation Fund, from which court awards and settlements would be paid. Furthermore, given the uncertainty of the legal environment surrounding tobacco litigation, an additional Contingency Reserve Account within the Compensation Fund would be established. The Fund and overall cap would be indexed to medical inflation.

* numbers are subject to budget re-estimation

- *Base Payment:* At the beginning of each year, the tobacco industry would make a base payment of $4 billion into the Compensation Fund. Court awards and settlements would be defrayed from this base amount. At the end of every year, any unobligated funds from the base payment would be deposited into an interest-bearing Contingency Reserve Account.

- *Out-of-Pocket Supplement:* If awards and settlements exceed the base payment in any given year, the industry would be liable for an additional $4 billion in out-of-pocket payments to cover the excess.

- *Contingency Reserve Account:* As stated above, at the end of every year, any unobligated funds from the $4 billion base payment would be placed in a Contingency Reserve Account within the Victims' Compensation Fund. For example, if awards and settlements paid in year 1 amount to $1 billion, $3 billion would be deposited in the Contingency Reserve Account. Initially, the first years following enactment of this legislation, funds in the Contingency Reserve Account would be expected to build up substantially as settlements and awards are likely to be relatively small. If at any point the Reserve reached $20 billion, the Attorney General would determine whether to continue to place any excess funds into the Reserve or to direct such funds to anti-smoking or other public health purposes. In any year in which liability awards and settlements exceeded $8 billion, the Contingency Reserve Account would be drawn down to make the excess payments. If, in the unlikely event that a year's awards and settlements ever depleted the Contingency Reserve Account, these claims would be rolled over and paid from the Compensation Fund at the beginning of the following year.

- *Small Claimant Protection:* The KIDS Act would provide that individuals, and smaller classes of individuals, would be given priority in disbursements from the Fund to ensure that potential large awards or settlements paid to large 3rd parties would not deny smaller claimants the timely payment of their claims.

VIII. ENDING TOBACCO INDUSTRY SECRECY

For decades, the tobacco companies have concealed evidence of the consequences of tobacco use, and deliberately misled the public. Moreover, the tobacco industry has broadly misused attorney-client privilege to the detriment of the public health. The KIDS Act would require tobacco manufacturers and their agents to disclose all previously non-public, internal documents relating to the health effects, safety, and marketing of their products to children. This reform would assist victims by providing litigants important information without the traditional difficulty and costs of discovery.

First, the FDA would be provided all documents it believes are needed to appropriately carry out its authority, including those related to health effects, nicotine and other tobacco ingredients, "less hazardous" or "safer" tobacco products and their design, as well as the advertising, marketing and promotion of such products.

* numbers are subject to budget re-estimation

Second, the establishment and administration of a document depository would be awarded competitively to a nongovernmental entity with no connections to the tobacco industry. Tobacco manufacturers and their agents would be required to submit all documents discovered through any litigation to this depository. They also would be required to include in the depository an index in such a form that would make the documents easily accessible and usable, again providing significant assistance and relief to victims and their survivors. In addition, tobacco companies would be required to waive attorney-client privilege on key documents as a precondition of eligibility for an annual cap on awards and settlements.

As a further step to assure full disclosure of appropriate documents, the annual liability cap would not apply to any awards or settlements stemming from a case in which it is found that documents were not disclosed as required under this Act.

IX. TRANSITION ASSISTANCE TO FARMERS

Changes in national policy relating to tobacco and the expected decline in tobacco consumption will have ramifications for farming families, workers and communities in tobacco growing regions. The KIDS Act would provide $15 billion* for compensation, income support and transitional assistance to tobacco farming families, and for economic development and related assistance in tobacco-dependent communities.

X. ASSURING CLEAN INDOOR AIR

Our knowledge is growing daily on the deleterious effects of exposure to environmental tobacco smoke (ETS), in homes, workplaces and other public facilities. Annually, 3,000 Americans die of lung cancer caused by second-hand smoke, and 15,000 children under 18 months of age are hospitalized with respiratory infections related to ETS exposure.

Thus, the KIDS Act would provide strong protections for workers and the public against exposures to ETS. In addition, our bill would place significant emphasis on reducing ETS exposure in the home, including such measures as pediatric outreach, public service announcements, and comprehensive media campaigns.

The KIDS Act would also require Congress to comply with the "no smoking" policies already in place in the Executive Branch. Furthermore, legislation will not preempt states and local governments from establishing even more stringent policies to protect individuals from ETS.

XI. STOPPING SMUGGLING AND SHOWING WORLD LEADERSHIP

Anti-Smuggling. In some countries, significant increases in cigarette prices have lead to large-scale cigarette smuggling. Contraband cigarette trafficking can occur both at national borders and between states with wide disparities in tobacco excise taxes. Since 1992, such criminal activities has increased more than 500% in the U.S.

* numbers are subject to budget re-estimation

Widely available contraband cigarettes would undermine the effect of a price increase on reducing tobacco use by children, which is the primary goal of our legislation. Therefore, the KIDS Act would allocate $300* million annually to strengthen federal anti-smuggling activities, both domestically and internationally. These measures would curtail the availability of "black market" tobacco products and ensure that economic and other policies aimed at reducing tobacco use have a chance to work.

World Leadership. The World Health Organization (WHO) currently estimates that tobacco use causes 3 million deaths a year worldwide. By the year 2023, WHO projects those deaths to increase to 10 million, with nearly 70 percent occurring in developing countries. U.S.-based transnational tobacco companies have significantly increased marketing and promotion efforts internationally. This trend is expected to accelerate with the enactment of strong U.S. policies.

Unlike the June 1997 Attorneys General tobacco settlement, the KIDS Act would provide clear leadership on international efforts to reduce tobacco use. This proposal would end U.S. Government support for tobacco promotion overseas, provide $100 million* per year to fund global education efforts, and encourage our participation with other nations in efforts to harmonize tobacco policies worldwide.

XII. INDUSTRY CONSENT DECREES

Voluntary, but legally binding consent decrees signed by federal and state governments and tobacco manufacturers, are important components of assuring that this legislation is as effective as possible in reducing tobacco use by children. Without these decrees, key provisions of the bill could be delayed by lengthy legal challenges. Therefore, to receive the benefits of the annual liability cap outlined above, tobacco companies would be required to sign legally binding consent decrees. Violation of any of the terms of the consent decrees would result in exclusion of that company from the annual liability cap. Among other things, the consent decrees would commit the companies to abide by the following agreements:

- Not to directly or indirectly bring or support legal challenges to the implementation of any aspect of the KIDS Act, including existing or future FDA regulatory authority, document disclosure, youth look-back survey methodology and penalties, and advertising and marketing restrictions;
- To pay and fully pass through the cost of annual industry payments, assuring that the price of cigarettes would increase by at least $1.50 per pack over 2 years, with comparable increases for other tobacco products;
- To abide by all reforms related to the labeling, sale, advertising and promotion of tobacco products contained in the legislation;
- Not to directly, or through contractors, lobby federal, state or local governments against any provision of the legislation;

* numbers are subject to budget re-estimation

- To only do business with those retailers who fully comply with all provisions of this legislation;
- To dissolve the Tobacco Institute and other existing trade associations;
- Not to advertise over the Internet; and,
- To comply with other marketing and advertising restrictions in both the FDA regulation and the proposed June 1997 tobacco settlement.

Consent decrees would be enforceable by the U.S. Attorney or State Attorneys General through federal and state courts.

XIII. ANNUAL TOBACCO PAYMENTS AND SPENDING

- *Industry Payments:* The KIDS Act would require a non-deductible industry payment of $10 billion upon enactment. That payment would be used by states and local communities and the federal government to begin to put strong anti-tobacco measures into place.

  One year after enactment, the tobacco industry would make a payment of $20 billion to the National Tobacco Trust Fund. Each year thereafter, the industry payment would be $25 billion, indexed for inflation.

- *Payments to States:* As under the June 1997 Attorneys General tobacco settlement proposal, $193.5 billion over 25 years would be reserved for state use. Of those funds, 50% would be distributed to states to use at their discretion. The remaining 50% would be allocated to the states for the purposes of tobacco prevention, education, and cessation, and for the expansion of existing public health or children's health programs.

  Additionally, $500 million annually would be made available to states meeting or exceeding youth tobacco reduction targets.

- *Payments for National Efforts:* The KIDS Act would hold in reserve $4 billion annually from the total industry payment for the purpose of pre-funding the National Victims' Compensation Fund. Remaining industry payments would be used exclusively for national anti-tobacco and public health purposes.

* numbers are subject to budget re-estimation

February 27, 1998

Congressional Leaders Are at Work On Bipartisan Bill for Tobacco Firms

By JEFFREY TAYLOR and BRIAN DUFFY
Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON -- A bipartisan bill that could break the logjam over tobacco legislation wouldn't give cigarette makers controversial legal protections, but would place an annual cap on the industry's legal payouts.

The bill, being written by Democratic Sens. Tom Harkin of Iowa and Bob Graham of Florida and Republican Sen. John Chafee of Rhode Island, also would raise cigarette prices $1.50 a pack over three years. This would accommodate public-health authorities calling for a cigarette-price increase of at least that much as the best possible deterrent to smoking by the underaged.

Sens. Harkin and Graham's offices emphasized last night that the bill is a work in progress. "We continue to be optimistic that [our] talks will produce comprehensive tobacco legislation that will be passed into law," spokesmen for the two senators said.

White House Scrutiny

The bill's progress is being watched closely by the White House. Its sponsors have held "technical-assistance sessions" with White House staff, the Food and Drug Administration and public-health advocates, including former Surgeon General C. Everett Koop and Matthew Myers of the National Center for Tobacco-Free Kids, and have briefed various officials and lawmakers.

The proposed national tobacco settlement contains three important legal protections for tobacco companies: immunity from punitive damages in civil lawsuits alleging past misconduct; a ban on future class-action lawsuits against the industry; and an annual cap, starting at $2 billion and rising to $5 billion, on the industry's payouts on any civil lawsuits it lost.

The punitive-damage and class-action provisions have been a lightning rod for criticism on Capitol Hill, and opinion polls show the public strongly disfavors giving the tobacco industry special legal

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protections. And neither Republicans nor Democrats have shown much appetite for a bill that would provide them to the industry.

But lawmakers might be more amenable to an annual cap on industry liability if the punitive damage and class-action provisions were scrapped, congressional aides in both parties suggest. Also, a cap might give the industry the financial predictability it sought in negotiating the $368.5 billion settlement, damping any opposition to strong, comprehensive tobacco legislation.

At a briefing last week, industry attorney Meyer Koplow was asked whether the industry could accept an annual cap without the other legal protections. He hesitated, then said the industry had considered that alternative in the settlement negotiations and decided a cap, alone, wouldn't be adequate protection from the wave of civil lawsuits it faces.

The Chafee-Harkin-Graham bill would reaffirm the FDA's authority to regulate nicotine, although it isn't clear whether it would classify nicotine as a drug as the FDA wants. It is just one of at least three efforts to craft bipartisan tobacco legislation, albeit one that the White House has singled out for especially close scrutiny.

Other signs of progress on tobacco legislation were also visible Thursday.

Senators Working Together

Senate Commerce Committee Chairman John McCain of Arizona and GOP Sen. Orrin Hatch of Utah, chairman of the Judiciary Committee, said they agreed to work together on a compromise of their rival tobacco bills. In a rare appearance before Sen. McCain's committee, Sen. Hatch said: "I want to work with the members of this committee to craft bipartisan, comprehensive antitobacco legislation which can be enacted this year."

To make the legislation bipartisan, Sen. McCain asked for help from Democrats including Sen. John Breaux of Louisiana, long regarded as a bridge for building coalitions across party lines.

Separately, the Justice Department is talking with the Liggett Group Inc., a unit of Brooke Group, about a deal that could significantly accelerate a criminal investigation of the industry.

An agreement to cooperate with prosecutors would be significant because Liggett could provide documents and other information about industry practices, including whether other companies manipulated nicotine levels. Justice Department attorneys are investigating whether tobacco executives testified falsely about that issue and other practices during appearances before Congress and in documents filed with

federal regulators.

Justice Department officials declined to comment. Stanley Arkin, Liggett's counsel in the Justice Department inquiry, didn't return calls to his New York office.

Attorneys familiar with the inquiry said prosecutors are exploring the possibility of filing a range of charges against Liggett and other cigarette makers. These could include charges of false statements and perjury as well as mail and wire-fraud allegations.

Any agreement would require the company to turn over internal documents, attorneys and others familiar with the inquiry said. "It's important not only to have internal documents that show potential criminal behavior, but to have a live witness who can corroborate events and testify before a grand jury," said Democratic Rep. Marty Meehan of Massachusetts, who sent the Justice Department a lengthy memo in 1994 alleging a variety of tobacco-industry misconduct.

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