"(B) the engineering, manipulation or control of nicotine in tobacco products;

"(C) the sale or marketing of tobacco products;

"(D) any research involving safer tobacco products; or

"(E) such other matters as the Secretary may prescribe; or

"(2) produced, or ordered to be produced, by the tobacco product manufacturer in any health-related civil or criminal proceeding, judicial or administrative, that has been commenced by the United States, an agency of the United States, a State or local governmental entity, or any person, or on behalf of such an entity or person, including attorney-client and other documents produced or ordered to be produced for in camera inspection.

"(b) ADDITIONAL INFORMATION.—For the purpose of obtaining additional information relating to the matters in subsection (a), the Secretary may hold hearings, require testimony, the deposition of witnesses, the answering of interrogatories, or enter into and inspect facilities.

"(c) DISCLOSURE BY THE SECRETARY.—Starting not later than 6 months after the date of the enactment of this subchapter, the Secretary shall begin to make available to the public, using the Internet and other means, the documents submitted under subsection (a).

"(d) PROTECTION OF CERTAIN INFORMATION.—The Secretary shall not disclose information obtained under this section if such information is entitled to protection as a trade secret or under the attorney-client privilege unless the Secretary determines that the disclosure of such information is necessary to promote the public health.

"(e) ENFORCEMENT.—Notwithstanding any other provision of law, manufacturers of tobacco products shall provide any deposition, documents, or other information, answer any interrogatories, and allow any entry or inspection required pursuant to this section.

"(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to interfere in any way with the discovery rights of courts or parties in civil or criminal proceedings, administrative or judicial, involving tobacco products, or the right of access to such documents under any other provision of law.

"(g) DEFINITION.—In this section:

"(1) DOCUMENTS.—The term 'documents' includes originals and drafts of any kind of written or graphic matter, regardless of the manner of production or reproduction, of any kind of description, whether sent or received or neither, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received or otherwise) regardless of whether 'confidential', 'privileged', or otherwise, including any paper, book, account, photograph, blueprint, drawing, agreement, contract, memorandum, advertising material, letter, telegram, object, report, record, transcript, study, note, notation, working paper, intra-office communication, intra-department communication, interdepartment communication, chart, minute, index sheet, routing sheet, computer software, computer data, delivery ticket, flow sheet, price list, quotation, bulletin, circular, manual, summary, recording of telephone or other conversation or of interviews, or of conferences, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, regardless of the manner produced or reproduced. Such term shall also include any tape, recording, videotape, computerization, or other electronic recording, whether digital or analog or a combination of the two.

"(2) MANUFACTURER OF A TOBACCO PRODUCT.—The term 'manufacturer of a tobacco product' also includes the Tobacco Institute, the Council for

Tobacco Research, the Smokeless Tobacco Council, the Center for Indoor Air Research, or any other trade association or entity that is primarily funded by persons who manufacture a tobacco product.

"SEC. 579. CITIZEN SUITS.

"(a) AUTHORITY.—Any individual on his or her own behalf may commence a civil action—

"(1) against any person who is alleged to be in violation of this subchapter, in the district court for the district in which the alleged violation occurred or in which the defendant resides or is found; or

"(2) against the Secretary or the Commissioner where there is alleged a failure of the Secretary or Commissioner to perform any act or duty required under this subchapter, in a district court for the district in which an alleged failure to perform occurred or in the district court of the District of Columbia.

"(b) JURISDICTION.—The district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the provisions of this subchapter, or to order the Secretary to perform such act or duty, as the case may be, and to apply any appropriate civil penalties. The district courts of the United States shall have jurisdiction to compel action by an agency where such action is found to be unreasonably delayed, except that such an action may not be maintained unless the plaintiff has provided the Secretary with a notice of the intent of the plaintiff to file such action at least 90 days prior to the filing of such action.

"(c) COSTS AND DAMAGES.—A court under subsection (b) may award costs of litigation, including reasonable attorney's fees, to any party where the court determines that such an award is appropriate. No damages of any kind, whether compensatory or punitive, may be awarded to the individual in actions described in subsection (a)(2). Any damages awarded to the Federal Government shall be paid to the Treasury.

"SEC. 580. AGRICULTURAL PRODUCERS.

"The Secretary may not promulgate any regulation under this subchapter that has the effect of placing regulatory burdens on tobacco producers (as such term is used for purposes of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) and the Agricultural Act of 1949 (7 U.S.C. 1441 et seq.)) in excess of the regulatory burdens generally placed on other agricultural commodity producers. This section shall not be construed to limit the regulatory requirements that may be imposed on producers who are also manufacturers under this Act.

"SEC. 581. AUTHORITY OF SECRETARY.

"To carry out this subchapter, the Secretary may hold hearings, administer oaths, issue subpoenas, require the testimony or deposition of witnesses, the production of documents, or the answering of interrogatories, or, upon presentation of the proper credentials, enter and inspect facilities. In the case of a refusal of a person to obey a subpoena, any district court of the United States for the district in which such person is found, resides or conducts business, upon application by the Commissioner, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce evidence or both. The failure to obey such an order of the court may be punished by the court as contempt thereof, and by penalties of up to $25,000 per day.".

SEC. 206. REPEALS.

The following provisions of law shall be repealed:

(1) The Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331 et seq.).

(2) The Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 et seq.).

SEC. 207. AUTHORITY OF FEDERAL TRADE COMMISSION.

Nothing in this title, or an amendment made by this title, shall be construed to in any way reduce the jurisdiction of the Federal Trade Commission over the advertising of tobacco products.

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

SEC. 301. PURPOSE.

It is the purpose of this title to encourage the achievement of reductions in the proportion of underage consumers of tobacco products through the imposition of additional financial deterrents relating to tobacco products if certain underage tobacco-use reduction targets are not met.

SEC. 302. CHILD TOBACCO USE SURVEYS.

(a) ANNUAL PERFORMANCE SURVEY.—Not later than 1 year after the date of the enactment of this Act and annually thereafter the Secretary shall conduct a survey to determine, in accordance with subsection (b)—

(1) the percentage of all individuals under 18 years of age who used a tobacco product within the past 30 days; and

(2) the percentage of all individuals under 18 years of age who identify each brand of tobacco product as the usual brand smoked or used within the past 30 days.

(b) EXCLUSION OF CERTAIN AGES.—The Secretary shall exclude from the survey conducted under subsection (a), children under the age of 12 years (or such other lesser age as the Secretary may establish to strengthen the validity of the survey).

(c) BASELINE LEVEL.—

(1) IN GENERAL.—The baseline level of the child tobacco product use (referred to in this title as the "baseline level") is the percentage of individuals under 18 years of age determined to have used the tobacco product in the first annual performance survey for 1999.

(2) MANUFACTURERS.—The baseline level of tobacco product use with respect to a manufacturer is the percentage of individuals under 18 years of age determined to have used any tobacco product of such manufacturer in the first annual performance survey for 1999.

(d) ADDITIONAL MEASURES.—In order to increase the understanding of youth tobacco product use, the Secretary may, for informational purposes only, add additional measures to the survey under subsection (a), conduct periodic or occasional surveys at other times, and conduct surveys of other populations such as young adults. The results of such surveys shall be made available to manufacturers and the public to assist in efforts to reduce youth tobacco use.

(e) ADMINISTRATION.—

(1) RESULTS.—The Secretary shall establish a scientific advisory board to ensure that surveys conducted under this section produce results that are reasonably precise and valid.

(2) TECHNICAL ADJUSTMENTS.—The Secretary may make technical changes in the manner in which the surveys are conducted so long as adjustments are made to ensure that the results of the surveys are comparable from year to year.

(3) PARTICIPATION IN SURVEY.—Notwithstanding any other provision of law, the Secretary may conduct a survey involving minors if the results of such survey with respect to such minors are kept confidential and not disclosed.

SEC. 303. REDUCTION IN UNDERAGE TOBACCO PRODUCT USAGE.

(a) ANNUAL DETERMINATION.—The Secretary shall annually determine, based on the annual performance surveys under section 302, whether the required percentage reduction (as described in subsection (b)) in the underage use of tobacco products for a year has been achieved for the year involved. Such determination shall be based on—

(1) with respect to cigarette products, the average annual percentage prevalence of the use of to-

bacco products by individuals who are under 18 years of age (as determined under section 302(a)) for the year involved as compared to the baseline level for cigarette products (as determined under section 302(c)); and

(2) with respect to smokeless tobacco products, the average annual percentage prevalence of the use of smokeless tobacco products by individuals who are under 18 years of age (as determined under section 302(a)) for the year involved as compared to the baseline level for smokeless tobacco products (as determined under section 302(c)).

(b) PERCENTAGE REDUCTION IN UNDERAGE USE OF TOBACCO PRODUCTS.—For purposes of this section, the required percentage reduction from the baseline level in the percentage underage use of tobacco products with respect to each tobacco product shall be as follows:

(1) CIGARETTES.—With respect to cigarettes—

(A) the percentage reduction in the percentage use of cigarettes shall be at least 20 percent for each of the calendar years 2001 and 2002;

(B) the percentage reduction in the percentage use of cigarettes shall be at least 40 percent for each of the calendar years 2003 and 2004;

(C) the percentage reduction in the percentage use of cigarettes shall be at least 55 percent for each of the calendar years 2005 through 2007; and

(D) the percentage reduction in the percentage use of cigarettes shall be at least 67 percent for calendar year 2008 and each subsequent calendar year.

(2) SMOKELESS TOBACCO PRODUCTS.—With respect to smokeless tobacco products—

(A) the percentage reduction in the percentage use of smokeless tobacco products shall be at least 15 percent for each of the calendar years 2001 and 2002;

(B) the percentage reduction in the percentage use of smokeless tobacco products shall be at least 25 percent for each of the calendar years 2003 and 2004;

(C) the percentage reduction in the percentage use of smokeless tobacco products shall be at least 35 percent for each of the calendar years 2005 and 2007; and

(D) the percentage reduction in the percentage use of smokeless tobacco products shall be at least 45 percent for calendar year 2008 and each subsequent calendar year.

(c) APPLICATION TO MANUFACTURER.—With respect to the average annual percentage prevalence of the use of each manufacturer's brands of tobacco product by individuals who are under 18 years of age, as determined on the basis of the annual performance survey conducted under section 302(a), each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act shall reduce the percentage of children who use such manufacturer's brand or brands in accordance with the percentage reductions required under subsection (b).

(d) REPORT.—Not later than December 31, 2005, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the progress made in achieving percentage reductions in the use of tobacco products together with the recommendations, if any, of the Secretary for stronger reductions in calendar years after 2008.

SEC. 304. NONCOMPLIANCE.

(a) INDUSTRY-WIDE PENALTY.—If, with respect to a year, the Secretary determines under section 303(a) that the required percentage reduction for either cigarettes or smokeless tobacco products has not been achieved as required under section 303(b), the Secretary shall impose an industry-wide penalty on the manufacturers of such product in an amount that is equal to $.10 cents for each unit of the tobacco product involved that is manufactured and distributed for consumer use in the year following the year in which the noncompliance occurs.

(b) MANUFACTURER-SPECIFIC PENALTY.—

(1) IN GENERAL.—With respect to each manufacturer for a year, if the Secretary determines under section 303(a) that the required percentage reduction for either cigarettes or smokeless tobacco products have not been achieved by such manufacturer as required under section 303(b), the Secretary shall impose a penalty on such manufacturer in an amount equal to

(A) $.10 cents if the noncompliance factor exceeds 0 but does not exceed 10;

(B) $.20 cents if the noncompliance factor exceeds 10 but does not exceed 15;

(C) $.30 cents if the noncompliance factor exceeds 15 but does not exceed 20; and

(D) $.40 cents if the noncompliance factor exceeds 20;

for each unit of a tobacco product that is manufactured and distributed for consumer use by such manufacturer in the year following the year for which the determination is made.

(2) NONCOMPLIANCE FACTOR.—The noncompliance factor of a manufacturer for a year shall be equal to the percentage reduction required under section 303(b) for the year less the actual percentage reduction for the year (as determined under paragraph (3)).

(3) ACTUAL PERCENTAGE REDUCTION.—The actual percentage reduction of a manufacturer shall be equal to 1 less the ratio of—

(A) the percentage of individuals under 18 years of age who have been determined to use the manufacturer's products (as determined under section 302(a)) for the year involved; and

(B) the baseline level for the manufacturer (as determined under section 302(c));

multiplied by 100.

(c) DE MINIMIS RULES.—

(1) EXEMPTION.—The Secretary shall not impose a penalty on a manufacturer under subsection (b) if the Secretary determines that the tobacco products manufactured by such manufacturer are

used by less than 0.5 percent of the total number of children determined to have used such tobacco products for the year involved.

(2) PENALTY.—If the Secretary determines that—

(A) either—

(i) the tobacco products manufactured by a manufacturer under the baseline survey conducted under section 302(c), are used by less than 0.5 percent of the total number of children determined to have used such tobacco products for the year involved; or

(ii) the manufacturer was not manufacturing tobacco products in the year the baseline survey was conducted; and

(B) under an annual survey conducted under section 302(a) for the year involved, the tobacco products manufactured by such manufacturer are used by more than 0.5 percent of the total number of children determined to have used such tobacco products for the year involved;

the Secretary shall impose a penalty on such manufacturer in an amount equal to \$.40 cents for each unit of the tobacco product involved that is manufactured and distributed for consumer use in the year following the year for which the determination is made.

(d) NONCOMPLIANCE FEES FOR CONSECUTIVE VIOLATIONS.—

(1) IN GENERAL.—If a manufacturer of a tobacco product, the cigarette industry, or the smokeless tobacco industry fails to comply with the reductions required under this title in 3 or 4 consecutive years, the noncompliance fee that is required to be paid by the manufacturer, cigarette industry, or smokeless tobacco industry, whichever is applicable, under this section for each unit of tobacco products manufactured by such manufacturer or industry which is distributed for consumer use in the year following the year in which the noncompliance occurs, shall be the amount determined under subsection (b) for the year multiplied by 2.

(2) ADDITIONAL NONCOMPLIANCE.—If a manufacturer or industry described in paragraph (1) fails to comply with the reductions required under this title—

(A) in 5 or 6 consecutive years, the noncompliance fee described in such paragraph shall be the amount determined under subsection (b) for the year multiplied by 3; and

(B) in 7 or more consecutive years, the noncompliance fee described in such paragraph shall be the amount determined under subsection (b) for the year multiplied by 4.

(e) PROHIBITION ON SINGLE-PACK SALES IN CASES OF REPEATED NONCOMPLIANCE.—Not later than 2 years after the date of enactment of this Act, the Secretary shall establish regulations to prohibit the sale of single packs of a manufacturer's tobacco products in cases of repeated noncompliance with the reductions required under section 303(b). Such regulations shall require that, if a manufacturer fails to comply with such reductions in 4 or more consecutive years, the manufacturer's tobacco products may be sold in the following year only in packages containing not less than 10 units of the product per package (200 cigarettes per package in the case of cigarettes, and a corresponding package size for other tobacco products).

(f) REQUIRED GENERIC PACKAGING IN SEVERE CASES OF REPEATED NONCOMPLIANCE.—Not later than 2 years after the date of enactment of this Act, the Secretary shall establish regulations to require units and packages of a manufacturer's tobacco products to have generic packaging in severe cases of repeated noncompliance with the reductions required under section 303(b). Such regulations shall require that, if a manufacturer fails to comply with such reductions in 6 or more consecutive years, the manufacturer's tobacco products may be sold in the following year only in units and packages whose packaging contains no external images, logos, or text (other than any required labels), except that the brand name and the identifier 'tobacco' may appear on the packaging in block lettering in black type on a white background.

(g) PAYMENT.—The penalty to be paid by a manufacturer under this section shall be paid on a quarterly basis, with payments due not later than 30 days after the end of each calendar quarter.

(h) PROCEDURES.—In assessing penalties under this section, the Secretary shall have in place procedures to take into account the effect that the margin of error of the annual survey may have on the amounts of penalties assessed to manufacturers.

(i) OTHER PRODUCTS.—The Secretary may promulgate regulations requiring reductions in the use of other tobacco products by individuals under 18 years of age. Such regulations shall contain provisions for the application of monetary penalties for the failure of manufacturers to achieve such reductions.

SEC. 305. RULEMAKING PROCEDURES.

(a) DOCKET.—Not later than the date of the proposal of any regulation under this title, the Secretary shall establish a rulemaking docket for action on such regulation (referred to in this section as a "rule"). Whenever a rule applies only within a particular State, a second (identical) docket shall be established in the appropriate regional office of the Department of Health and Human Services.

(b) PUBLICATION.—In the case of any rule to which this section applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of title 5, United States Code, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the "comment period"). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of—

(1) the factual data on which the proposed rule is based;

(2) the methodology used in obtaining the data and in analyzing the data; and

(3) the major legal interpretations and policy considerations underlying the proposed rule.

(c) PUBLIC COMMENT.—

(1) PUBLIC INSPECTION.—The rulemaking docket required under subsection (a) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Secretary shall provide copying facilities which may be used at the expense of the person seeking copies, but the Secretary may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(2) COMMENTS AND OTHER MATERIAL IN DOCKET.—

(A) COMMENTS.—Promptly upon receipt by the Secretary, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the

Secretary determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(B) REQUIREMENT TO PLACE IN DOCKET.—The drafts of proposed rules submitted by the Secretary to the Office of Management and Budget for any interagency review process prior to the proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Secretary shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(d) OPPORTUNITY FOR ORAL PRESENTATION.—In promulgating a rule to which this section applies—

(1) the Secretary shall allow any person to submit written comments, data, or documentary information;

(2) the Secretary shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions;

(3) a transcript shall be kept of any oral presentation; and

(4) the Secretary shall keep the record of such proceeding open for 30 days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(e) MATERIAL TO ACCOMPANY RULE.—

(1) IN GENERAL.—The promulgated rule shall be accompanied by—

(A) a statement of basis and purpose like that referred to in subsection (b) with respect to a proposed rule; and

(B) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(2) RESPONSES.—The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(3) LIMITATION.—The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation..

(f) JUDICIAL REVIEW.—

(1) IN GENERAL.—The record for judicial review shall consist exclusively of the material referred to in subsection (b), subparagraph (A) of subsection (c)(2), and paragraphs (1) and (2) of subsection (e).

(2) LIMITATIONS.—Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Secretary that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Secretary shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Secretary refuses to convene such a proceeding, such

person may seek review of such refusal in the United States court of appeals for the appropriate circuit. Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Secretary or the court for a period not to exceed 3 months.

(g) JURISDICTION.—The sole forum for challenging procedural determinations made by the Secretary under this section shall be in the United States court of appeals for the appropriate circuit at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(h) REVERSAL OF SECRETARY'S ACTION.—In the case of review of any action of the Secretary to which this section applies, the court may reverse any such action found to be—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority, or limitations; or short of statutory right; or

(4) without observance of procedure required by law, if—

(A) such failure to observe such procedure is arbitrary or capricious;

(B) the requirement of subsection (f)(2) has been met; and

(C) the condition of the last sentence of subsection (g) is met.

(i) DEADLINES.—Each statutory deadline for promulgation of rules to which this section applies which requires promulgation less than 6 months after date of proposal may be extended to not more than 6 months after date of proposal by the Secretary upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this section.

(j) EFFECTIVE DATE.—The requirements of this section shall take effect with respect to any rule the proposal of which occurs after 90 days after the date of enactment of this Act.

(k) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to authorize judicial review of regulations or orders of the Secretary under this Act, except as otherwise provided for in this title.

(l) NO STAY.—In any action respecting the promulgation of regulations under this title or the administration or enforcement of this title no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

(m) PUBLIC PARTICIPATION.—It is the intent of Congress that, consistent with the policy of the Administrative Procedures Act, the Secretary in promulgating any regulation under this title, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days, except as otherwise expressly provided for.

SEC. 306. MISCELLANEOUS PROVISIONS.

(a) JUDICIAL REVIEW.—A manufacturer of tobacco products may seek judicial review of any action under this title only after a penalty has been assessed and paid by the manufacturer to the Department of the Treasury and only in the United States District Court for the District of Columbia. In an action by a manufacturer seeking judicial review of an annual performance survey, the manufacturer may prevail—

(1) only if the manufacturer shows that the results of the performance survey were arbitrary and capricious; and

(2) only to the extent that the manufacturer shows that it would have been required to pay a substantially lesser penalty if the results of the performance survey were not arbitrary and capricious.

(b) PROHIBITION.—No stay or other injunctive relief may be granted by the Secretary or any court that has the effect of enjoining the imposition and collection of penalties to be applied under this section.

(c) DEFINITIONS.—As used in this title:

(1) CHILD.—The term "child" means, except as provided in section 302(b), an individual who is under the age of 18.

(2) MANUFACTURER.—The term "manufacturer" includes any person who imports a finished tobacco product.

TITLE IV—TOBACCO TRANSITION ASSISTANCE TRUST FUND

SEC. 401. TOBACCO TRANSITION ASSISTANCE TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the "Tobacco Transition Trust Fund", consisting of such amounts as may be appropriated or credited to the Trust Fund.

(b) TRANSFERS TO TRUST FUND.—There are appropriated and transferred to the Trust Fund for each fiscal year amounts made available to the Trust Fund as provided for in section 101(d)(7).

(c) REPAYABLE ADVANCES.—

(1) AUTHORIZATION.—There are authorized to be appropriated to the Trust Fund, as repayable advances, such sums as may from time to time be necessary to make expenditures under subsection (d).

(2) REPAYMENT WITH INTEREST.—Repayable advances made to the Trust Fund shall be repaid, and interest on the advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the Trust Fund to make the payments.

(3) RATE OF INTEREST.—Interest on an advance made under this subsection shall be at a rate determined by the Secretary of Treasury (as of the close of the calendar month preceding the month in which the advance is made) that is equal to the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the anticipated period during which the advance will be outstanding.

(d) EXPENDITURES FROM TRUST FUND.—

(1) IN GENERAL.—Subject to paragraph (2), amounts in the Trust Fund shall be available for making expenditures to provide transition assistance to tobacco producers and tobacco-growing communities to adjust to reduced demand for tobacco, including economic development assistance, assistance through retraining of tobacco producers and tobacco factory workers, or scholarships for tobacco producers.

(2) IMPLEMENTATION.—Amounts in the Trust Fund shall be available for making expenditures described in paragraph (1) only if a law is enacted not later than January 1, 2000, that specifically prescribes authorized uses of the Trust Fund.

(e) BUDGETARY TREATMENT.—This section constitutes budget authority in advance of appropriations Acts.

(f) TERMINATION OF EFFECTIVENESS.—The authority provided by this section terminates effective January 1, 2000, unless a law is enacted not later than January 1, 2000, that specifically prescribes authorized uses of the Trust Fund.

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

SEC. 501. STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE.

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) is amended by adding at the end the following:

"SEC. 35. STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE.

"(a) DEFINITIONS.—In this section—

"(1) PUBLIC FACILITY.—

"(A) IN GENERAL.—The term 'public facility' means any workplace covered by this Act and any enclosed structure regularly entered by 10 or more individuals at least 1 day per week, including any such building owned by or leased to a Federal, State, or local government entity (including Congress). Such term shall not include any building or portion thereof while used as a private residence.

"(B) EXCLUSIONS.—The term 'public facility' does not include a portion of a building which is used as a bar, a facility in which a retailer engages primarily in the business of selling tobacco products, a hotel guest room that is designated as a smoking room, a private club while in use for social or fraternal activities that are not open to the public, a casino, a bingo parlor, a restaurant with an indoor seating capacity of fewer than 50 individuals that is not a fast food restaurant, or a prison.

"(C) BAR.—The term "bar" means any indoor area that is open to the general public and that is devoted to the sale and service of alcoholic beverages for on-premises consumption where the service of food is only incidental to the consumption of such beverages. Service of food shall be considered incidental if the food service generates less than 50 percent of the total annual gross food and liquor sales of the establishment.

"(D) FAST FOOD RESTAURANT.—As used in subparagraph (B), the term 'fast food restaurant' means any restaurant or chain of restaurants in which employees primarily distribute food through a customer pick-up (either at a counter or drive-through window). The Administrator of the Occupational Safety and Health Administration may promulgate regulations to clarify this subparagraph to ensure that the intended inclusion of workers in establishments catering largely to individuals under 18 years of age is achieved.

"(2) RESPONSIBLE ENTITY.—The term 'responsible entity' means, with respect to any public facility, the owner or operator of such facility except that, in the case of any such facility or portion thereof which is leased, such term means the lessee.

"(b) SMOKE-FREE ENVIRONMENT POLICY.—

"(1) POLICY REQUIRED.—In order to protect children and adults from cancer, respiratory disease, heart disease, and other adverse health effects associated with breathing environmental tobacco smoke, the responsible entity for each public facility shall adopt and implement at such facility a smoke-free environment policy which meets the requirements of paragraph (2) or (4).

"(2) ELEMENTS OF POLICY.—

"(A) IN GENERAL.—Each smoke-free environment policy for a public facility shall—

"(i) prohibit the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the facility and on facility property within the immediate vicinity of the entrance to the facility or any air intake vent (including open windows and doors); and

"(ii) post a clear and prominent notice of the smoking prohibition in appropriate and visible locations at the public facility.

"(B) EXCEPTION.—The smoke-free environment policy for a public facility may provide an exception to the prohibition specified in subparagraph (A) for 1 or more specially designated smoking areas within a public facility if such area or areas meet the requirements of paragraph (3).

"(3) SPECIALLY DESIGNATED SMOKING AREAS.—A specially designated smoking area meets the requirements of this subsection if—

"(A) the area is ventilated in accordance with specifications promulgated by the Secretary of Labor, in consultation with the Administrator of the Environmental Protection Agency, that ensure that air from the area is directly exhausted to the outside of the building and does not recirculate or drift to other areas within the public facility;

"(B) the area is maintained at negative pressure, as compared to adjacent nonsmoking areas, as determined under regulations promulgated by the Secretary of Labor, in consultation with the Administrator of the Environmental Protection Agency; and

"(C) nonsmoking individuals are fully advised that the area is a smoking area and such individuals do not have to enter the area for any purpose while smoking is occurring in such area, and for an additional period that allows for at least 3 air exchanges to occur in the room.

Cleaning and maintenance work shall be conducted in such area only while no smoking is occurring in the area, following an additional period that allows for at least 3 air exchanges to occur in the room.

"(4) SPECIAL RULES.—

"(A) SCHOOLS AND OTHER FACILITIES SERVING CHILDREN.—

"(i) IN GENERAL.—With respect to a facility described in clause (ii), the responsible entity for the facility shall—

"(I) adopt and implement at such facility a smoke-free environment policy that prohibits the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the facility and on facility property;

"(II) adopt and implement at such facility a smoke-free environment policy that prohibits the use of smokeless tobacco products within the facility and on facility property; and

"(III) post a clear and prominent notice of the smoking and smokeless tobacco prohibition in appropriate and visible locations at the public facility.

"(ii) FACILITY.—A facility described in this clause is—

"(I) an elementary or secondary school (as such term is defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801);

"(II) any facility at which a Head Start program or project is being carried out under the Head Start Act (42 U.S.C. 9831 et seq.);

"(III) any facility at which a licensed or certified child care provider provides child care services; and

"(IV) any recreation or other facility maintained primarily to provide services to children as determined by the Secretary of Labor.

"(B) PUBLIC TRANSPORTATION.—

"(i) IN GENERAL.—With respect to any responsible entity which operates conveyances of public transportation (including bus, rail, aircraft, boat, or any other conveyance determined appropriate by the Secretary of Labor), the responsible entity shall—

"(I) adopt and implement on such conveyances a smoke-free environment policy that prohibits the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the conveyance and on property affiliated with the conveyance; and

"(II) post a clear and prominent notice of the smoking prohibition in appropriate and visible locations on the conveyance.

"(ii) RAIL TRANSPORTATION.—The smoke-free environment policy for a responsible entity that operates a rail carrier providing rail commuter service may provide an exception to the prohibition specified in clause (i) with respect to such service for 1 or more specially designated smoking cars if such cars meet the requirements of paragraph (3).

"(c) ENFORCEMENT.—To be eligible to receive funds under the Healthy Kids Act, a State shall make a demonstration to the Secretary that the State is enforcing this section within the State. Such laws or procedures shall permit aggrieved individuals to enforce this section through administrative and judicial means.

"(d) PREEMPTION.—Notwithstanding section 18, nothing this section shall preempt or otherwise affect any other existing or future Federal, State or local law which provides protection from health hazards from environmental tobacco smoke that are as least as stringent as those provided for in this section.

"(e) REGULATIONS.—Not later than 12 months after the date of enactment of this section, the Secretary of

Labor shall promulgate such regulations as the Secretary deems necessary to carry out this section.

"(f) EFFECTIVE DATE.—The provisions of this section shall take effect on the date that is 1 year after the date of enactment of this section.".

TITLE VI—PUBLIC HEALTH AND OTHER PROGRAMS

Subtitle A—Research Programs

SEC. 601. TOBACCO-RELATED RESEARCH.

(a) IN GENERAL.—The Secretary shall establish a program to encourage and promote (through grants, contracts, or otherwise) expanded research, investigations, experiments and studies, concerning—

(1) the relationship between the use of tobacco products and cancer, cardiovascular diseases, lung diseases and other diseases;

(2) the effects of tobacco products, ingredients of tobacco products, and tobacco smoke on the human body and methods of reducing any negative effects, including the development of non-addictive, reduced risk tobacco products;

(3) the addictive effects of nicotine and how such effects differ with respect to different individuals;

(4) the prevention and cure of diseases and illnesses most associated with the use of tobacco products;

(5) differentials between brands of tobacco products with respect to health effects or addiction;

(6) the effectiveness of drugs and devices in assisting individuals to stop using tobacco products; and

(7) the relationship between the use of tobacco products and cancer, particularly among minorities.

(b) ELIGIBILITY.—To be eligible to receive a grant, contract, or other assistance under this section an entity or individual shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(c) USE OF FUNDS.—Amounts received by an individual or entity under this section shall be used to carry out activities under the program established under subsection (a).

(d) ADDITIONAL REQUIREMENTS.—To be eligible to receive a grant, contract, or other assistance under this section an entity or individual shall provide assurances to the Secretary that—

(1) any research to be conducted under the grant or contract will be generally consistent with the requirements applicable to research conducted under the authority of the National Institutes of Health;

(2) adequate records will be maintained with respect to such assistance; and

(3) amounts provided to the individual or entity will be subject to independent audit.

(e) EFFECT ON MINORITIES AND WOMEN.—The program established under subsection (a) shall be conducted in a manner that ensures that research will be conducted to investigate the different effects of tobacco use on minorities and women.

(f) DISSEMINATION OF RESULTS.—The Secretary shall establish procedures for the dissemination of the results of the research conducted under this section.

(g) FUNDING.—There shall be made available to carry out this section an amount equal to the amount made available under section 121(c)(1)(D) for a fiscal year.

SEC. 602. RESEARCH RELATING TO PATTERNS OF SMOKING.

(a) IN GENERAL.—The Secretary shall establish a program to provide for the conduct of research (through the provision of grants, contracts, or otherwise) concerning the cultural, social, behavioral, neurological and psychological reasons that individuals refrain from using tobacco products, begin to use tobacco products, continue using tobacco products, or quit using tobacco products.

(b) ELIGIBILITY.—To be eligible to receive a grant, contract, or other assistance under this section an entity or individual shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(c) USE OF FUNDS.—Amounts received by an individual or entity under this section shall be used to carry out activities under the program established under subsection (a).

(d) ADDITIONAL REQUIREMENTS.—To be eligible to receive a grant, contract, or other assistance under this section an entity or individual shall provide assurances to the Secretary that—

(1) any research to be conducted under the grant or contract will be generally consistent with the requirements applicable to research conducted under the authority of the National Institutes of Health;

(2) adequate records will be maintained with respect to such assistance; and

(3) amounts provided to the individual or entity will be subject to independent audit.

(e) EFFECT ON MINORITIES AND WOMEN.—The program established under subsection (a) shall be conducted in a manner that ensures that research will be conducted to investigate the different factors affecting tobacco use among minorities and women in proportion to their prevalence in the smoking population.

(f) DISSEMINATION OF RESULTS.—The Secretary shall establish procedures for the dissemination of the results of the research conducted under this section.

(g) FUNDING.—There shall be made available to carry out this section an amount equal to 10 percent of the amounts made available under section 101(d)(5)(C) for a fiscal year.

SEC. 603. SURVEILLANCE AND EVALUATION.

(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall conduct surveillance and evaluation activities, including the surveys authorized under title III, to monitor patterns of tobacco use and determine the effectiveness of various anti-tobacco programs funded under this Act. Such activities shall include studies of the responsiveness of smokers and potential smokers, particularly youth smokers, to price increases and non-price incentives.

(b) FUNDING.—There shall be made available to carry out this section an amount equal to 5 percent of the amounts made available under section 101(d)(5)(C) for a fiscal year.

Subtitle B—Education and Prevention Programs

SEC. 611. GRANTS FOR SCHOOL- AND COMMUNITY-BASED TOBACCO DANGER EDUCATION PROGRAMS.

(a) IN GENERAL.—The Secretary shall establish a program to award grants to States to enable such States—

(1) to carry out school-based and college- or university-based education programs concerning the dangers of using tobacco products using methods that are proven and effective; and

(2) to carry out community-based prevention programs, including in predominantly minority communities, using methods that are proven and effective.

(b) ELIGIBILITY.—To be eligible to receive a grant under this section a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a State plan (that is subject to approval by the Secretary) that describes—

(1) the types of programs that the State will fund under the grant;

(2) the manner in which the State will ensure that the programs will be age-appropriate, culturally

appropriate, and linguistically appropriate for the target population; and

(3) the manner in which the State will monitor the effectiveness of such programs.

(c) USE OF FUNDS.—Amounts received by a State under this section shall be used to—

(1) carry out State-wide school-based education programs that are focused on those regions of the State with high smoking rates and targeted at populations who are most at risk to start smoking;

(2) carry out State-wide college- and university-based education programs to discourage individuals between the ages of 18 and 24 from beginning to use tobacco products, such programs to be focused on colleges or universities with high smoking rates;

(3) carry out community-based prevention programs that are focused on those populations within the community that are most at-risk to use tobacco products or that have been targeted by tobacco advertising or marketing;

(4) develop curriculums for such programs;

(5) acquire materials for such programs;

(6) expand the IMPACT or ASSIST program; and

(7) carry out other activities determined appropriate by the Secretary.

(d) ADDITIONAL REQUIREMENTS.—To be eligible to receive a grant under this section a State shall provide assurances to the Secretary that—

(1) the State will annually report to the Secretary on the effectiveness of the educational approaches implemented by the State;

(2) adequate records will be maintained with respect to such assistance;

(3) amounts provided to individuals or entities will be subject to independent audit; and

(4) the State will involve local public health officials in the planning and implementation of the program.

(e) FUNDING.—There shall be made available to carry out this section an amount equal to 15 percent of the amounts made available under section 101(d)(5)(C) for a fiscal year.

Subtitle C—Miscellaneous Programs

SEC. 621. COUNTER-ADVERTISING PROGRAMS.

(a) IN GENERAL.—The Secretary shall carry out programs to reduce tobacco usage through media-based (such as counter-advertising campaigns) and nonmedia-based education, prevention and cessation campaigns designed to discourage the use of tobacco products by individuals and to encourage those who use such products to quit. Such programs shall include national and local campaigns and shall target, in a culturally and linguistically appropriate manner, adults, children, women and minorities who have been targeted by tobacco industry advertising.

(b) ELIGIBILITY.—To be eligible to receive assistance under this section an entity or individual shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(c) USE OF FUNDS.—Amounts received by an individual or entity under this section shall be used to carry out activities under the programs established under subsection (a). Such amounts may be used to design and implement such activities and to conduct research concerning the effectiveness of such programs.

(d) FUNDING.—There shall be made available to carry out this section an amount equal to 25 percent of the amounts made available under section 101(d)(5)(C) for a fiscal year.

SEC. 622. NATIONAL TOBACCO CESSATION PROGRAM.

(a) ESTABLISHMENT.—There is established a program to be known as the "National Tobacco Cessation

Program". The Secretary may award grants to, and enter into contracts and cooperative agreements with, public and private entities for the purpose of expanding the availability and utilization of tobacco use cessation services.

(b) USE OF FUNDS.—Amounts made available under a grant, contract or cooperative agreement under subsection (a) shall be used for the planning, establishment, or administration of tobacco use cessation programs approved in accordance with subsection (c).

(c) CESSATION PROGRAMS.—Programs receiving assistance under this section shall provide a range and quality of services consistent with the most recent cessation service guidelines issued by the Agency for Health Care Policy and Research. Using the best available scientific information, the Secretary shall promulgate such additional guidelines as are necessary to assure the quality, accessibility and cost effectiveness of services receiving funds under this section.

(d) FUNDING.—There shall be made available to carry out this section an amount equal to 33 percent of the amounts made available under section 101(d)(5)(C) for a fiscal year.

SEC. 623. ASSISTANCE FOR THOSE SUFFERING FROM TOBACCO-RELATED ILLNESSES.

(a) IN GENERAL.—The Secretary shall establish a program to provide assistance and compensation to individuals (and entities providing services to such individuals) suffering from tobacco-related illnesses and conditions. Under such program assistance shall be targeted at individuals who are determined to be uninsured or underinsured and who can demonstrate financial hardship.

(b) DEVELOPMENT OF PLAN.—The Secretary shall carry out the program established under subsection (a) under a plan to be developed by the Secretary, not later than 1 year after the date of enactment of this Act.

(c) ELIGIBILITY.—

(1) OF ENTITIES.—To be eligible to receive assistance under this section an entity shall—

(A) be a public or nonprofit private entity;

(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(C) provide assurances that amounts received under the grant will be used in accordance with subsection (d)(1); and

(D) meet any other requirements determined appropriate by the Secretary.

(2) OF INDIVIDUALS.—To be eligible to receive assistance under this section an individual shall—

(A) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(B) provide assurances that amounts received under the grant will be used only in accordance with subsection (d)(2); and

(C) meet any other requirements determined appropriate by the Secretary.

(d) USE OF FUNDS.—Assistance provided under this section shall be used—

(1) in the case of an entity eligible under subsection (c)(1), to provide treatment for tobacco-related illnesses; or

(2) in the case of an individual eligible under subsection (c)(2), to pay for the receipt of treatments for tobacco-related illnesses.

(e) ADDITIONAL REQUIREMENTS.—In providing assistance under this section, the Secretary shall ensure that such assistance is not used to duplicate any payments made under any health insurance plans but rather to cover uncompensated care provided to individuals with tobacco-related illnesses.

(f) FUNDING.—There shall be made available to carry out this section an amount equal to 3 percent of the amounts made available under section 101(d)(5)(C) for a fiscal year.

SEC. 624. INTERNATIONAL TOBACCO CONTROL.

(a) GOVERNMENTAL ACTIVITIES.—

(1) IN GENERAL.—The Secretary (in consultation with the Secretary of State) may provide bilateral assistance, including technical assistance through the Centers for Disease Control and Prevention, to foreign countries and multilateral assistance to assist such countries and Organization in reducing and preventing the use of tobacco in foreign countries. Such assistance shall be focused on preventing the use of tobacco products by minors.

(2) FUNDING.—There shall be made available to carry out this subsection an amount equal to 2 percent of the amounts made available under section 101(d)(5)(C) for a fiscal year. Such amount shall be split equally between bilateral and multilateral assistance.

(b) NONGOVERNMENTAL ACTIVITIES.—

(1) PURPOSE.—The purpose of this subsection is to establish the American Center on Global Health and Tobacco (referred to in this subsection

as "ACT"). ACT shall assist organizations in other countries to reduce and prevent the use of tobacco. Activities ACT supports shall include—

(A) public education programs that inform the public about the hazards of tobacco use and of environmental tobacco smoke;

(B) mass media campaigns, including paid counter-tobacco advertisements, to reverse the image appeal of pro-tobacco messages, especially those that glamorize and "Westernize" tobacco use to young people; and

(C) education about the economic and societal costs of tobacco use, and effective tobacco use prevention and cessation strategies that are appropriate for the country involved.

(2) ESTABLISHMENT.—

(A) IN GENERAL.—There is hereby established in the District of Columbia a private, nonprofit corporation to be known as the American Center on Global Health and Tobacco. ACT shall—

(i) not be an agency or establishment of the United States; and

(ii) except as otherwise provided in this section, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code section 29-501 et seq.).

(B) RELATION TO UNITED STATES.—Nothing in this subsection shall be construed as making ACT an agency or establishment of the United States, or as making the members of the Board of ACT, or its employees, officers or employees of the United States.

(C) RELATION TO NONGOVERNMENTAL ORGANIZATIONS.—ACT shall have a limited staff, and, to the maximum extent practicable, utilize the available experience and talents of nongovernmental organizations with specialized experience in health, education, media, and tobacco.

(D) GOVERNING BOARD.—The Secretary shall appoint a governing board of up to 25 members including—

(i) on a bipartisan basis, Members of the Senate and of the House of Representatives;

(ii) the heads of American public health organizations;

(iii) the heads of American media, marketing, and other nongovernment institutions and corporations; and

(iv) individuals active in education, public health, and other relevant activities.

(E) INTERNATIONAL ADVISORY COUNCIL.—An International Advisory Council consisting of representatives from key global, regional, and national public health organizations, and leading individual educators and health professionals shall provide advisory assistance to ACT.

(3) FUNDING.—The Secretary of the Treasury shall on October 1 of each fiscal year beginning after the date of enactment of this Act, transfer an amount equal to 1 percent of the amounts made available under section 101(d)(5)(C) for the fiscal year to ACT to carry out this subsection.

(4) REQUIREMENTS FOR ELIGIBILITY FOR ANNUAL TRANSFERS FROM THE TRUST FUND.—

(A) OVERSIGHT.—ACT and its grantees shall be subject to the oversight and supervision of Congress.

(B) COMPLIANCE.—

(i) FUNDING CONTINGENT ON COMPLIANCE.—Annual payments from the Trust Fund may be made to ACT under this subsection only if ACT complies with the requirements specified in this subsection.

(ii) USE OF FUNDS.—ACT may only fund programs for private sector groups, and may not carry out programs directly. ACT may provide funding only for programs which are consistent with the purposes of this subsection.

(C) SALARIES AND COMPENSATION.—

(i) NO OTHER SOURCE OF COMPENSATION.—Officers and employees of ACT may not receive any salary or other compensation from any source other than ACT for services performed for ACT.

(ii) UNITED STATES OFFICERS AND EMPLOYEES.—An individual who is an officer or employee of the United States who also serves on the Board of Directors or as an officer or employee of ACT, may not receive any compensation or travel expenses in connection with services performed for ACT.

(D) STOCKS AND DIVIDENDS.—ACT shall not issue any shares of stock or declare or pay any dividends.

(E) AUDITS.—

(i) PUBLIC ACCOUNTS.—The accounts of ACT shall be audited annually in accordance with generally accepted auditing standards.

(ii) COMPTROLLER GENERAL.—The financial transactions of ACT for each fiscal year may be audited by the Comptroller General. A report of each audit shall be made by the Comptroller General to Congress. A copy of each report shall be furnished to the President and to ACT at the time the report is submitted to Congress.

(F) RECORDKEEPING.—ACT shall ensure that each recipient of assistance from ACT under this subsection keeps such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. ACT shall ensure that it, or any of its duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of each recipient of assistance from ACT that are pertinent to assistance provided through ACT under this subsection.

SEC. 625. NATIONAL EVENT SPONSORSHIP PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a program to be known as the "National Event Sponsorship Program" under which the Secretary may award grants to eligible entities or individuals for the sponsorship of activities described in subsection (c).

(b) ELIGIBILITY.—To be eligible to receive a grant under this section an entity or individual shall—

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(A) a description of the event, activity, team, or entry for which the grant is to be provided;

(B) documentation that the event, activity, team, or entry involved was sponsored or otherwise funded by a tobacco manufacturer or distributor prior to the date of the application; and

(C) a certification that the applicant is unable to secure funding for the event, activity, team, or entry involved from sources other than those described in paragraph (2);

(2) provide assurances that amounts received under the grant will be used in accordance with subsection (d); and

(3) meet any other requirements determined appropriate by the Secretary.

(c) PERMISSIBLE SPONSORSHIP ACTIVITIES.—Events, activities teams, or entries for which a grant may be provided under this section include—

(1) an athletic, musical, artistic, or other social or cultural event or activity that was sponsored in whole or in part by a tobacco manufacturer or distributor prior to the date of enactment of this Act;

(2) the participation of a team that was sponsored in whole or in part by a tobacco manufacturer

or distributor prior to the date of enactment of this Act, in an athletic event or activity; and

(3) the payment of a portion or all of the entry fees of, or other financial or technical support provided to, an individual or team by a tobacco manufacturer or distributor prior to the date of enactment of this Act, for participation of the individual in an athletic, musical, artistic, or other social or cultural event.

(d) USE OF FUNDS.—Amounts received under a grant under this section shall be used to—

(1)(A) pay the costs associated with the sponsorship of an event or activity described in subsection (c)(1);

(B) provide for the sponsorship of an individual or team;

(C) pay the required entry fees associated with the participation of an individual or team in an event or activity described in subsection (c)(3);

(D) provide financial or technical support to an individual or team in connection with the participation of that individual or team in an activity described in subsection (c)(3); or

(E) for any other purposes determined appropriate by the Secretary; and

TITLE VII—LIABILITY PROTECTION; CONSENT DECREES; NATIONAL PROTOCOL

Subtitle A—Liability Protection and Attorney Fees

SEC. 701. DISMISSAL OF AND LIMITATIONS ON CIVIL ACTIONS.

(a) STATE ATTORNEY GENERAL ACTIONS.—

(1) PENDING ACTIONS.—With respect to a State, to be eligible to receive funds under section 111, the attorney general for such State shall resolve any civil action seeking recovery for expenditures attributable to the treatment of tobacco-related illnesses and conditions that has been commenced by the State against a manufacturer, distributor, or retailer of a tobacco product and is pending on the date of enactment of this Act.

(2) FUTURE ACTIONS BASED ON PRIOR CONDUCT.—With respect to a State, to be eligible to receive funds under section 111, the attorney general for such State shall agree that the State will not commence a civil action after the date of enactment of this Act that is based on the conduct of a participating manufacturer, distributor or retailer of a tobacco product that occurred prior to the date of en-

actment of this Act seeking recovery for expenditures attributable to the treatment of tobacco induced illnesses and conditions against such a manufacturer, distributor or retailer.

(3) APPLICATION TO LOCAL GOVERNMENTAL ENTITIES.—The requirements described in paragraphs (1) and (2) shall apply to civil actions commenced by or on behalf of local governmental entities for the recovery of costs attributable to tobacco-related illnesses if such localities are within a State whose attorney general has elected to resolve actions under paragraph (1) and enter into the agreement described in paragraph (2). Such provisions shall not apply to those local governmental entities that are within a State whose attorney general has not resolved such actions or entered into such agreements.

(b) STATE OPTION FOR ONE-TIME OPT OUT.—

(1) IN GENERAL.—The Secretary shall establish procedures under which the attorney general of a State may, not later than 1 year after the date of enactment of this Act, elect not to resolve an action described in subsection (a)(1) or not enter into an agreement under subsection (a)(2). A State whose attorney general that makes such an election shall not be eligible to receive payments from the Trust

Fund under section 111. Procedures under this paragraph shall permit such a State to make such an election on a one-time basis.

(2) EXTENSION.—In the case of a State that has secured a judgment against a manufacturer, distributor or retailer of a tobacco product in an action described in subsection (a)(1) prior to or during the period described in paragraph (1), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary.

(3) APPLICATION TO CERTAIN STATES.—A State that has resolved an action described in subsection (a)(1) with a manufacturer, distributor or retailer of a tobacco product prior to the date of enactment of this Act may not make an election described in paragraph (1) if, as part of the resolution of such action, the State agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(c) FEDERAL ACTIONS.—The Federal Government is barred from commencing a civil action against a participating manufacturer, distributor, or retailer of a tobacco product seeking recovery for expenditures attributable to the treatment of tobacco-related illnesses associated with the conduct of a manufacturer that occurred prior to the date of enactment of this Act.

(d) RULES OF CONSTRUCTION.—

(1) POST ENACTMENT CLAIMS.—Nothing in this title shall be construed to limit the ability of a government, entity, or individual to commence an action against a participating manufacturer, distributor or retailer of a tobacco product with respect to a claim that is based on the conduct of such manufacturer, distributor or retailer that occurred after the date of enactment of this Act.

(2) NO LIMITATION ON INDIVIDUALS.—Nothing in this section shall be construed to limit the right of an individual to commence a civil action for past, present, or future conduct by manufacturers, distributors or retailers of tobacco products.

(e) DEFINITION.—As used in this section, the term "participating manufacturer" means a manufacturer of tobacco products that has entered into a consent decree under section 711 and that is a signatory to the Protocol under section 721.

SEC. 702. ATTORNEY'S FEES AND EXPENSES.

(a) SOURCE AND PAYMENT OF AWARDS.—In no event shall any award of the Arbitration Panel established under subsection (b) be paid from, credited against, or otherwise affect in any way any fee payments that are required to be made by any participating manufacturer under to section 102 or under any other provision of this Act. Any such award shall be paid by participating manufacturers pursuant to an allocation agreement among such manufacturers.

(b) ARBITRATION PANEL.—

(1) ESTABLISHMENT.—For the purpose of awarding of attorneys' fees and expenses relating to litigation affected by, or legal services that resulted in whole or in part in, this Act, there is established an Arbitration Panel which shall consist of—

(A) 4 members to be appointed by the Attorney General in consultation with the Trustees;

(B) 1 member to be appointed by the manufacturers;

(C) 1 member to be appointed by the Attorneys General of the States; and

(D) 1 member to be appointed by the private attorneys.

(2) OPERATION.—

(A) ESTABLISHMENT.—The members of the Arbitration Panel shall be appointed not later than 30 days after the effective date of this Act.

(B) PROCEDURES.—Not later than 30 days after the date on which all members of the Arbitration Panel are appointed under paragraph (1), the Panel shall establish the procedures under which the Panel will operate which shall include—

(i) a requirement that any finding by the Arbitration Panel must be in writing and supported by written reasons;

(ii) procedures for the exchanging of exhibits and witness lists by the various claimants for awards;

(iii) to the maximum extent practicable, requirements that proceedings before the Panel be based on affidavits rather than live testimony; and

(iv) a requirement that all claims be submitted to the Arbitration Panel not later than 3 months after the effective date of this Act and a determination made by the Panel with respect to such claims not later than 7 months after such date of enactment.

(3) RIGHT TO PETITION.—Any individual attorney or group of attorneys involved in litigation affected by this Act shall have the right to petition the Arbitration Panel for attorneys' fees and expenses.

(4) CRITERIA.—In making any award pursuant to this section, the Arbitration Panel shall consider the following criteria:

(A) The time and labor required by the claimant.

(B) The novelty and difficulty of the questions involved in the action for which the claimant is making a claim.

(C) The skill requisite to perform the legal service involved properly.

(D) The preclusion of other employment by the attorney due to acceptance of the action involved.

(E) Whether the fee is fixed or a percentage.

(F) Time limitations imposed by the client or the circumstances.

(G) The amount involved and the results obtained.

(H) The experience, reputation, and ability of the attorneys involved.

(I) The undesirability of the action.

(J) Such other factors as justice may require.

(5) APPEAL AND ENFORCEMENT.—The findings of the Arbitration Panel shall be final, binding, nonappealable, and payable within 30 days after the date on which the finding is made public, except that if an award is to be paid in installments, the first installment shall be payable within such 30 day period and succeeding installments shall be paid annually thereafter.

(c) VALIDITY AND ENFORCEABILITY OF PRIVATE AGREEMENTS.—Notwithstanding any other provision of this Act, nothing in this section shall be construed to abrogate or restrict in any way the rights of any parties to mediate, negotiate, or settle any fee or expense disputes or issues to which this section applies, or to enter into private agreements with respect to the allocation or division of fees among the attorneys party to any such agreement.

Subtitle B—Consent Decrees

SEC. 711. CONSENT DECREES.

(a) REQUIREMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), to be eligible to receive payments under section 111, a State, and to be eligible to receive liability protections under subtitle A, a tobacco manufacturer, shall enter into consent decrees under this section to be effective on the date of enactment of this Act.

(2) GOOD FAITH EFFORTS.—The limitation described in paragraph (1) with respect to payments under section 111 shall not apply to a State if the attorney general of the State certifies to the Secretary that—

(A) the State has made good faith efforts to enter into a consent decree in accordance with this subtitle; and

(B) such State is willing to be bound by such decree but such decree does not exist because—

(i) of the refusal on the part of a tobacco manufacturer to enter into such decree; or

(ii) the appropriate court has not entered the decree even though the parties have lodged such a decree with the court.

(b) TERMS AND CONDITIONS.—

(1) IN GENERAL.—The consent decrees described in subsection (a) shall resolve the State action (or potential action in the case of a manufacturer that was not a defendant in a State action but that desires to become a participating manufacturer or in the case of a State that does not have a suit pending against a manufacturer) for claims associated with the conduct of the manufacturer that occurred prior to the date of enactment of this Act.

(2) GENERAL TERMS AND CONDITIONS.—The terms and conditions contained in the consent decrees described in subsection (a) shall contain the following provisions relating to—

(A) restrictions on tobacco product advertising and marketing and youth access to such products;

(B) the termination, establishment, and operation of trade associations;

(C) the disclosure of tobacco smoke constituents;

(D) the disclosure of nontobacco constituents and ingredients found in tobacco products;

(E) the disclosure of existing and future documents relating to health, toxicity, and addiction related to tobacco product usage;

(F) the obligation of manufacturers to make payments for the benefit of States, private litigants and the general public;

(G) the obligation of manufacturers to enter into the Protocol under subtitle C;

(I) the obligation of manufacturers to interact only with distributors and retailers that operate in compliance with the applicable provisions of Federal, State, or local law regarding the marketing and sale of tobacco products;

(J) requirements for warnings, labeling, and packaging of tobacco products;

(K) the resolution of pending litigation (or potential future litigation for misconduct that occurred prior to the date of enactment of this Act) as required under subtitle A and as agreed to by the parties to the decree; and

(L) any other matter determined appropriate by the Secretary or the parties involved.

(3) LIMITATIONS.—The terms and conditions contained in the consent decrees described in subsection (a) shall not contain provisions relating to—

(A) tobacco product design, performance, or modification;

(B) manufacturing standards and good manufacturing practices;

(C) testing and regulation with respect to toxicity and ingredients approval; and

(D) the tobacco usage reduction requirement described in section 303.

(4) ENFORCEABILITY.—The terms and conditions contained in the consent decrees described in subsection (a) shall be enforceable by the signatories, as well as the Attorney General, and shall include a provision that prohibits signatories from challenging the enforceability of the consent decrees.

(5) CONSTRUCTION.—The terms and conditions contained in the consent decrees described in subsection (a) shall provide that the terms of the decree will be construed in a manner that is consistent with the provision of this Act.

(c) APPROVAL.—

(1) IN GENERAL.—Prior to the entry of a consent decree by a court under this section the court must find that the provisions of the consent decree—

(A) have been approved by the Secretary and the Attorney General;

(B) are fair and reasonable; and

(C) are in the public interest.

(2) DETERMINATION BY SECRETARY.—To approve a consent decree under paragraph (1)(A), the Secretary and the Attorney General shall have determined whether the provisions of the decree are consistent with this Act and the Food, Drug and Cosmetic Act or the rules and regulations promulgated under such Acts.

(3) NOTICE TO PUBLIC.—With respect to the approval of a consent decree under this section, the court shall ensure that the public has been given not less than 60 days notice of the filing of the decree by the parties and any objections thereto must be addressed to the satisfaction of the court.

(d) ENFORCEMENT.—The provisions of a consent decree entered under this section shall remain in effect and enforceable in the court in which the decree is entered, even if the underlying action is dismissed.

SEC. 712. NON-PARTICIPATING MANUFACTURERS.

With respect to a manufacturer that elects not to enter into a consent decree under section 711, such manufacturer shall not be eligible to receive the liability protections under section 701.

Subtitle C—National Tobacco Control Protocol

CHAPTER 1—ESTABLISHMENT

SEC. 721. NATIONAL TOBACCO CONTROL PROTOCOL.

(a) REQUIREMENT.—To be eligible to receive the liability protections provided for in subtitle A, each tobacco manufacturer to which this Act applies shall, not later than 90 days after the date of enactment of this Act, enter into a National Tobacco Control Protocol with the Attorney General of the United States and the attorney general of each State that does not elect to opt out under section 701(b)(1).

(b) TERMS AND CONDITIONS.—The Protocol referred to in subsection (a) shall be—

(1) developed by the Attorney General, in consultation with the Secretary, the State attorneys' general, the Federal Trade Commission and other individuals determined appropriate by the Attorney General, as a binding and enforceable contract that embodies the terms of this subtitle; and

(2) designed to be enforceable in Federal or State courts as provided for in this subtitle.

(c) CONTRACTS.—As part of the Protocol under this section, a manufacturer shall agree, with respect to any contract entered into by the manufacturer with an entity that is a distributor or retailer of tobacco products, to include in such contract as a term and condition a requirement that such distributor or retailer comply with the provisions of the Protocol.

CHAPTER 2—TERMS AND CONDITIONS

SEC. 725. APPLICATION OF CHAPTER.

The provisions of this chapter shall be considered as part of the Protocol.

SEC. 726. AGREEMENT TO PROHIBIT CERTAIN ADVERTISING.

(a) PROHIBITION ON OUTDOOR ADVERTISING.—

(1) IN GENERAL.—No manufacturer, distributor, or retailer may use any form of outdoor tobacco product advertising, including billboards, posters, or placards.

(2) STADIA AND ARENAS.—Except as otherwise provided in this Act, a manufacturer, distributor, or retailer shall not advertise tobacco products in any arena or stadium where athletic, musical, artistic or other social or cultural events or activities occur.

(b) PROHIBITION ON USE OF HUMAN IMAGES AND CARTOONS.—No manufacturer, distributor, or retailer may use a human image or a cartoon character or cartoon-type character in its advertising, labeling or promotional material with respect to a tobacco product.

(c) PROHIBITION ON ADVERTISING ON THE INTERNET.—No manufacturer, distributor, or retailer may use the Internet to advertise tobacco products unless such an advertisement is inaccessible in or from the United States.

(d) PROHIBITION ON POINT OF SALE ADVERTISING.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, no manufacturer, distributor, or retailer may use point of sale advertising of tobacco products.

(2) ADULT ONLY STORES AND TOBACCO OUTLETS.—Paragraph (1) shall not apply to point of sale advertising at adult only stores and tobacco outlets.

(3) PERMISSIBLE ADVERTISING.—

(A) IN GENERAL.—Each manufacturer of tobacco products may display not more than 2 separate point of sale advertisements in or at each location at which tobacco products are offered for sale.

(B) RETAILERS.—No manufacturer, distributor, or retailer may enter into any arrangement with a retailer to limit the ability of the retailer to display any form of permissible point of sale advertisement or promotional material originating with another manufacturer, distributor, or retailer.

(4) LIMITATIONS.—

(A) IN GENERAL.—A point of sale advertisement permitted under this subsection shall be comprised of a display area than is not larger than 576 square inches (either individually or in the aggregate) and shall consist only of black letters on a white background or other recognized typographical marks. Such advertisement shall not be attached to nor located within 2 feet of any fixture on which candy is displayed for sale.

(B) AUDIO AND VIDEO FORMATS.—Audio and video advertisements otherwise permitted under this Act may be distributed to individuals who are 18 years of age or older at point of sale but may not be played or viewed at such point of sale.

(C) DISPLAY FIXTURES.—Display fixtures in the form of signs consisting of brand name and price and not larger than 2 inches in height are permitted.

(5) DEFINITION.—For purposes of this subsection, the term "point of sale advertising" means all printed or graphical materials bearing the brand name (alone or in conjunction with any other word), logo, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification similar or identical to those used for tobacco products, which, when used for its intended purpose, can reasonably be anticipated to be seen by customers at a location at which tobacco products are offered for sale.

SEC. 727. CONSENSUAL RESTRICTIONS.

(a) RESTRICTION ON PRODUCT NAMES.—A manufacturer shall not use a trade or brand name of a non-tobacco product as the trade or brand name for a cigarette or smokeless tobacco product, except for a tobacco product whose trade or brand name was on both a tobacco product and a non-tobacco product that were sold in the United States on January 1, 1998.

(b) ADVERTISING LIMIT ACTIONS.—

(1) IN GENERAL.—A manufacturer, distributor, or retailer may in accordance with this Act, disseminate or cause to be disseminated advertising or labeling which bears a tobacco product brand name (alone or on conjunction with any other word) or

any other indicia of tobacco product identification only in newspapers, in magazines, in periodicals or other publications (whether periodic or limited distribution), on billboards, posters and placards in accordance with section 726(a), in nonpoint of sale promotional material (including direct mail), in point-of-sale promotional material, and in audio or video formats delivered at a point-of-sale.

(2) LIMITATION.—A manufacturer, distributor, or retailer that intends to disseminate, or to cause to be disseminated, advertising or labeling for a tobacco product in a medium that is not described in paragraph (1) shall notify the Secretary not less than 30 days prior to the date on which such medium is to be used. Such notice shall describe the medium and discuss the extent to which the advertising or labeling may be seen by individuals who are under 18 years of age.

(3) ACTION BY SECRETARY.—Not later than 30 days after the date on which the Secretary receives a notice under paragraph (2), the Secretary shall make a determination with respect to the action to be taken concerning such notice.

(c) RESTRICTION ON PLACEMENT IN ENTERTAINMENT MEDIA.—

(1) IN GENERAL.—No payment shall be made by any manufacturer, distributor, or retailer for the placement of any tobacco product or tobacco product package or advertisement—

(A) as a prop in any television program or motion picture produced for viewing by the general public; or

(B) in a video or on a video game machine.

(2) VIDEO GAME.—The term "video game" means any electronic amusement device that utilizes a computer, microprocessor, or similar electronic circuitry and its own cathode ray tube, or is designed to be used with a television set or a monitor, that interacts with the user of the device.

(3) VIDEO.—The term "video" means an audiovisual work produced for viewing by the general public, such as a television program, a motion picture, a music video, and the audiovisual display of a video game.

(d) RESTRICTIONS ON GLAMORIZATION OF TOBACCO PRODUCTS.—No direct or indirect payment shall be made, or consideration given, by any manufacturer, distributor, or retailer to any entity for the purpose of promoting the image or use of a tobacco product through print, film or broadcast media that appeals to individuals under 18 years of age or through a live performance by an entertainment artist that appeals to such individuals.

SEC. 728. AGREEMENT ON FORMAT AND CONTENT REQUIREMENTS FOR LABELING AND ADVERTISING.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), each manufacturer, distributor, or retailer advertising or causing to be advertised, disseminating or causing to be disseminated, any labeling or advertising for a tobacco product shall use only black text on a white background.

(b) CERTAIN ADVERTISING EXCEPTED.—

(1) IN GENERAL.—Subsection (a) shall not apply to advertising—

(A) in any facility where vending machines and self-service displays are permitted under this title if the advertising involved—

(i) is not visible from outside of the facility; and

(ii) is affixed to a wall or fixture in the facility;

(B) that appears in any publication (whether periodic or limited distribution) that is an adult publication.

(2) ADULT PUBLICATION.—For purposes of paragraph (1)(B), the term "adult publication" means a newspaper, magazine, periodical, or other publication—

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

(B) that is read by fewer than 2,000,000 individuals who are under 18 years of age as measured by competent and reliable survey evidence.

(c) AUDIO OR VIDEO FORMATS.—Each manufacturer, distributor or retailer advertising or causing to be advertised any advertising for a tobacco product in an audio or video format shall comply with the following:

(1) With respect to an audio format, the advertising shall be limited to words only with no music or sound effects.

(2) With respect to a video format, the advertising shall be limited to static black text only on a white background. Any audio with the video advertising shall be limited to words only with no music or sound effects.

SEC. 729. AGREEMENT TO BAN ON NONTOBACCO ITEMS AND SERVICES, CONTESTS AND GAMES OF CHANCE, AND SPONSORSHIP OF EVENTS.

(a) BAN ON ALL NON-TOBACCO MERCHANDISE.—No manufacturer, importer, distributor, or retailer shall market, license, distribute, sell or cause to be marketed, licensed, distributed or sold any item (other than tobacco products) or service, which bears the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification similar or identifiable to those used for any brand of tobacco products.

(b) GIFTS, CONTESTS, AND LOTTERIES.—No manufacturer, distributor, or retailer shall offer or cause to be offered to any person purchasing tobacco products any gift or item (other than a tobacco product) in consideration of the purchase of such products, or to any person in consideration of furnishing evidence, such as credits, proofs-of-purchase, or coupons, of such a purchase.

(c) SPONSORSHIP.—

(1) IN GENERAL.—No manufacturer, distributor, or retailer shall sponsor or cause to be sponsored any athletic, musical, artistic or other social or cultural event, or any entry or team in any event, in which the brand name (alone or in conjunction with

any other word), logo, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification similar or identical to those used for tobacco products is used.

(2) USE OF CORPORATE NAME.—A manufacturer, distributor, or retailer may sponsor or cause to be sponsored any athletic, musical, artistic or other social or cultural event in the name of the corporation which manufactures the tobacco product if—

(A) both the corporate name and the corporation were registered and in use in the United States prior to January 1, 1995; and

(B) the corporate name does not include any brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia or product identification identical or similar to, or identifiable with, those used for any brand of tobacco products.

CHAPTER 3—ENFORCEMENT

SEC. 731. FEDERAL ENFORCEMENT OF THE PROTOCOL.

(a) ACTIONS.—The Attorney General may bring an action for the enforcement, or to restrain any breach, of the Protocol in the United States District Court for the

District of Columbia or in the district court of the United States for the district in which the breach occurred.

(b) REMEDY.—In any action under subsection (a), the district court involved—

(1) shall restrain the conduct that is the subject of the breach of the Protocol;

(2) shall order specific performance of the obligations set forth in the Protocol;

(3) may order civil penalties against any manufacturer who violates a requirement of the Protocol in an amount not more than $250,000 per violation per day; and

(4) with respect to officers of manufacturers who knowingly violate the protocol, may impose appropriate criminal penalties, including incarceration.

(c) CONTRACTS WITH STATE AGENCIES.—The Secretary may award grants to or enter into contracts with an agency of any State to assist in the enforcement of the provisions of the Protocol.

(d) ACTION BY ATTORNEY GENERAL.—With respect to the funding of any activities under subsection (a), the Attorney General shall use amounts available in the Trust Fund under section 102. If the Attorney General determines that amounts available in the Trust Fund are insufficient, the Attorney General may use amounts available for the activities of the Department of Justice.

SEC. 732. STATE ENFORCEMENT OF THE PROTOCOL.

(a) CIVIL ACTION.—The attorney general of a State may bring an action for the enforcement, or to restrain a breach, of the Protocol if the alleged violation that is the subject of the proceedings occurred in that State.

(b) CONCURRENT JURISDICTION.—Both Federal and State courts shall have jurisdiction over a proceeding described in subsection (a). If such a proceeding is commenced in a district court of the United States, the court shall take into consideration the size and scope of any State penalties that have been applied for the identical violations.

(c) REMEDIES.—In any proceeding described in subsection (b) the remedies available shall be those described in section 731(b).

SEC. 733. PRIVATE ENFORCEMENT OF PROTOCOL.

(a) IN GENERAL.—A manufacturer may seek a declaration of the rights and obligations of the manufacturer under the Protocol by filing an action pursuant to section 2201 of title 28, United States Code.

(b) CIVIL ACTION.—Any person may bring a civil action against a manufacturer to enforce, or restrain breaches of, the Protocol by such manufacturer, except that—

(1) no such action may be commenced or maintained if the Secretary has settled a proceeding pertaining to such alleged breach; and

(2) the court, in any such action, shall restrain conduct in breach of the Protocol and order specific performance of the obligations set forth in the Protocol, and may award damages which at a minimum will recover any economic benefit derived as a result of the noncompliance involved together with an amount awarded as a suitable penalty associated with such breach.

Any damages awarded under this subsection shall be remitted to the Treasury.

(c) RIGHT OF INTERVENTION.—In any proceeding described in section 731(a) or 732(a), any manufacturer may intervene as a matter of right.

TITLE VIII—MISCELLANEOUS PROVISIONS

SEC. 801. PROHIBITION ON USE OF FUNDS TO FACILITATE THE EXPORTATION OR PROMOTION OF TOBACCO.

(a) IN GENERAL.—Notwithstanding any other provision of law, no funds made available by appropriations or otherwise made available may be used by any officer, employee, department, or agency of the United States—

(1) to promote or encourage the export, reexport, sale, manufacture, advertising, promotion, distribution, or use of tobacco or tobacco products to or in a foreign country; or

(2) to seek, through negotiation or otherwise, the removal or reduction by any foreign country of any restriction or proposed restriction in that country on the importation, export, reexport, sale, manufacture, advertising, promotion, distribution, packaging, labeling, use, content, imposition of tariffs, or taxation, of tobacco or tobacco products.

(b) EXCEPTION.—Subsection (a)(2) shall not apply to any restriction or proposed restriction by a foreign country if—

(1) the restriction is applied in a manner which constitutes a means of arbitrary or unjustifiable discrimination between countries;

(2) the Secretary of Commerce certifies in writing to Congress that the restriction is being applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination between countries; and

(3) the Secretary of Health and Human Services certifies to Congress in writing that the restriction is not a reasonable means of protecting the public health.

(c) DEFINITION.—In this section, the term "arbitrary or unjustifiable discrimination" means a restriction or proposed restriction by a foreign country that—

(1) is arbitrary or unjustifiable; and

(2) does not adhere to the principle of national treatment and applies less favorable treatment to goods that are imported into that country than the country applies to like goods that are the product, growth, or manufacture of that country.

SEC. 802. WHISTLEBLOWER PROTECTIONS.

(a) PROHIBITION OF REPRISALS.—An employee of any manufacturer, distributor, or retailer of a tobacco product may not be discharged, demoted, or otherwise discriminated against (with respect to compensation, terms, conditions, or privileges of employment) as a reprisal for disclosing to an employee of the Food and Drug Administration, the Department of Health and Human Services, the Department of Justice, or any State or local regulatory or enforcement authority, information relating to a violation of law related to this Act or a State or local law that furthers the purposes of this Act.

(b) ENFORCEMENT.—Any employee or former employee who believes that such employee has been discharged, demoted, or otherwise discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the end of the 2-year period beginning on the date of such discharge, demotion, or discrimination.

(c) REMEDIES.—If the district court determines that a violation has occurred, the court may order the manufacturer, distributor, or retailer involved to—

(1) reinstate the employee to the employee's former position;

(2) pay compensatory damages; or

(3) take other appropriate actions to remedy any past discrimination.

(d) LIMITATION.—The protections of this section shall not apply to any employee who—

(1) deliberately causes or participates in the alleged violation of law or regulation; or

(2) knowingly or recklessly provides substantially false information to the Food and Drug Administration, the Department of Health and Human Services, the Department of Justice, or any State or local regulatory or enforcement authority.

(e) APPLICATION OF FALSE CLAIMS ACT.—Section 3730(d) of title 31, United States Code, shall apply with respect to any employee to which this section applies if the disclosure of such employee results in a payment of any fee or fine to the Federal Government by the manufacturer, distributor or retailer involved, regardless of whether such employee ever commenced an action concerning the disclosure.

SEC. 803. PROHIBITIONS RELATING TO TOBACCO PRODUCTS AND CHILDREN.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by adding at the end the following:

"SEC. 804. PROHIBITION ON SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO CHILDREN.

"(a) GENERAL RULE.—It shall be unlawful for any domestic concern or any officer, director, employee, or agent of such concern to make use of the mails or any means or instrumentality of interstate commerce to cause or contribute, either directly or through a foreign subsidiary, joint venture, affiliate, or licensee, to—

"(1) the sale or distribution of tobacco products in a foreign country to children; or

"(2) the advertising or promotion of tobacco products in a foreign country in a manner that appeals to children.

"(b) INTERPRETATION.—For purposes of subsection (a), the advertising or promotion of tobacco products shall be considered to be in a manner that appeals to children if the advertising or promotion is carried out in a manner that would not be permissible under the regulations referred to in section 202 of the Healthy Kids Act if it occurred in the United States.

"SEC. 805. LABELING.

"It shall be unlawful for any domestic concern or any officer, director, employee, or agent of such concern, either directly or through a foreign subsidiary, joint venture, affiliate, or licensee, to make use of the mails or any means or instrumentality of interstate commerce to cause or contribute to the export from the United States or the sale or distribution in, or export from, any other country any tobacco product the package of which does not contain a warning label that—

"(1) is in the primary language or languages of the country in which the tobacco product is sold or distributed to consumers; and

"(2) except for the requirement of paragraph (1)—

"(A) complies with Federal requirements for labeling of similar tobacco products manufactured, imported, or packaged for sale or distribution in the United States; or

"(B) complies with the labeling requirements of the foreign country in which the product is sold or distributed to consumers and which labeling requirements the Secretary determines are substantially similar to Federal requirements and are adequately enforced by such country.".

(b) ENFORCEMENT.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) as amended by section 203(e), is further amended by adding at the end the following:

"(cc) To carry out an act made unlawful by section 804 or 805.

(c) REWARD.—Section 303(b)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333)(b)(5)) is amended by adding at the end the following: "If a person provides information leading to the institution of a criminal proceeding against, and conviction of, a person for a violation of section 301(cc), such person shall be entitled to one-half of the criminal fine imposed and collected for such violation but not more than $125,000.".

(d) DEFINITIONS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) as amended by section 203(a)(3), is further amended by adding at the end the following:

"(ll) The term 'domestic concern' means—

"(1) any individual who is a citizen, national, or resident of the United States; and

"(2) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

"(mm) The term 'children' means an individual under the age of 18.".

SEC. 804. PRESERVATION OF STATE AND LOCAL AUTHORITY.

Except as otherwise provided for in this Act (or an amendment made by this Act), nothing in this Act shall be construed as prohibiting a State or political subdivision of a State from imposing requirements, prohibitions, penalties or other measures, whether by statute, rule, regulation, ordinance, judicial decree, consent decree, or settlement agreement, to further the purposes of this Act that are in addition to the requirements, prohibitions, or penalties required under this Act. Nothing in this Act (or an amendment made by this Act) shall preclude or deny the right of any State or political subdivision of a State to adopt or enforce any requirements, prohibitions, or penalties relating to tobacco products to the extent that such requirements, prohibitions or penalties are not less stringent than those required under this Act (or amendments).

SEC. 806. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

TITLE IX—PROVISIONS RELATING TO NATIVE AMERICANS

SEC. 901. PROVISIONS RELATING TO NATIVE AMERICANS.

(a) IN GENERAL.—The provisions of this Act (or an amendment made by this Act) shall apply to the manufacture, distribution, and sale of tobacco products in any area within the jurisdiction of an Indian tribe or tribal organization.

(b) RELIGIOUS PRACTICE EXCEPTION.—In recognition of the religious, traditional and ceremonial uses of tobacco and tobacco products by many Indian tribes and the members of such tribes, nothing in this Act (or and amendment made by this Act) shall be construed to infringe upon the rights of such tribes or members to transfer, acquire, possess, or use any tobacco or tobacco products for such purposes. The preceding sentence shall only be construed to apply to those quantities of tobacco products necessary to fulfill recognized religious, traditional or ceremonial purposes and not to permit the general marketing of tobacco products not in compliance with chapter IX of the Federal Food, Drug and Cosmetic Act.

(c) PAYMENTS TO TRUST FUND.—Any Indian tribe or tribal organization that engages in the manufacturer of tobacco products shall be subject to liability for an assessment under section 102.

(d) APPLICATION OF FEDERAL FOOD, DRUG AND COSMETIC ACT REQUIREMENTS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall promulgate regulations to provide for the application of any requirements of the Food, Drug and Cosmetic Act with respect to tobacco products manufactured, distributed, or sold in any area within the jurisdiction of an Indian tribe or tribal organization as appropriate to comply with subsections (a) and (b).

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

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

(B) the functions to be exercised through the use of such assistance relate to activities within the exterior boundaries of the reservation or other areas within the jurisdiction of the tribe involved; and

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

(3) DETERMINATIONS.—The Secretary, in consultation with the Secretary of the Interior, shall make determinations concerning the eligibility of an Indian tribe or tribal organization for assistance under regulations under paragraph (1) not later than 90 days after the date on which such tribe or organization submits an application for such assistance.

(4) IMPLEMENTATION BY SECRETARY.—If the Secretary determines that the Indian tribe or tribal organization is not willing or qualified to administer the requirements of the regulations promulgated under this subsection, the Secretary, in consultation with the Secretary of the Interior, shall implement and enforce such regulations on behalf of the tribe or organization.

(e) RETAIL LICENSING REQUIREMENTS.—

(1) IN GENERAL.—The requirements of section 577 of the Federal Food, Drug and Cosmetic Act (as added by section 204 of this Act) shall apply to

retailers that sell tobacco products in any area within the jurisdiction of an Indian tribe or tribal organization.

(2) SELF-REGULATION.—In order to be eligible for funds under subsection (f), an Indian tribe or tribal organization shall implement a tribal licensing program within the exterior boundaries of the reservation and other areas within the jurisdiction of the tribe consistent with the regulations promulgated under section 577 of the Federal Food, Drug and Cosmetic Act.

(3) IMPLEMENTATION BY SECRETARY.—If the Secretary, in consultation with the Secretary of the Interior, determines that the Indian tribe or tribal organization is not qualified to administer the requirements of section 577 of the Federal Food, Drug and Cosmetic Act, the Secretary, in consultation with the Secretary of the Interior, shall implement such requirements on behalf of the tribe or organization.

(f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

(1) IN GENERAL.—For each fiscal year the Secretary shall pay to each Indian tribe that has an approved tribal anti-smoking plan a tribal grant for the fiscal year in an amount equal to the amount de-

termined under paragraph (3), and shall reduce the amounts payable under section 111 to any State in which the service area or areas of the Indian tribe are located by the amount so determined.

(2) PLAN.—To be eligible to receive a payment under paragraph (1), an Indian tribe shall prepare and submit to the Secretary for approval an anti-smoking plan and shall otherwise meet the requirements of subsection (e).

(3) AMOUNT DETERMINED.—The amount of any funds for which an Indian tribe is eligible under paragraph (1) shall be determined by the Secretary based on the ratio of the total number of Indians residing on such tribe's reservation or in areas within the jurisdiction of the tribe in the State to the total population of the State multiplied by the amount allocated to State under section 111.

(4) USE.—Amounts provided to a tribe or organization under this paragraph shall be used to reimburse the tribe for smoking-related health expenditures, to further the purposes of this Act, and in accordance with a plan submitted by the tribe or organization and approved by the Secretary as being in compliance with this Act. Tribes and tribal organizations shall have the flexibility to utilize such

termined under paragraph (3), and shall reduce the amounts payable under section 111 to any State in which the service area or areas of the Indian tribe are located by the amount so determined.

(2) PLAN.—To be eligible to receive a payment under paragraph (1), an Indian tribe shall prepare and submit to the Secretary for approval an anti-smoking plan and shall otherwise meet the requirements of subsection (e).

(3) AMOUNT DETERMINED.—The amount of any funds for which an Indian tribe is eligible under paragraph (1) shall be determined by the Secretary based on the ratio of the total number of Indians residing on such tribe's reservation or in areas within the jurisdiction of the tribe in the State to the total population of the State multiplied by the amount allocated to State under section 111.

(4) USE.—Amounts provided to a tribe or organization under this paragraph shall be used to reimburse the tribe for smoking-related health expenditures, to further the purposes of this Act, and in accordance with a plan submitted by the tribe or organization and approved by the Secretary as being in compliance with this Act. Tribes and tribal organizations shall have the flexibility to utilize such

amounts to meet the unique health needs of such tribes within the context of tribal health programs if such programs meet the fundamental Federal requirements under this Act as determined by the Secretary.

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

(g) OBLIGATION OF MANUFACTURERS.—A participating manufacturer shall not engage in any activity in an area within the jurisdiction of an Indian tribe or tribal organization that is prohibited under the Protocol.

(h) INDIAN HEALTH SERVICE.—Amounts made available under section 101(d)(5)(B) shall be provided to the Indian Health Service to be used for anti-tobacco-related consumption and cessation activities including—

(1) clinic and facility design, construction, repair, reno[illegible]on, maintenance a[illegible] improvement;

(2) provider services and equipment;

(3) domestic and community sanitation associated with clinic and facility construction and improvement;

(4) inpatient and outpatient services; and

(5) other programs and services provided through the Indian Health Service or through tribal contracts, compacts, grants or cooperative agreements with the Indian Health Service and which are deemed appropriate to raising the health status of Indians.

(i) PREEMPTION.—

(1) GENERAL PREEMPTION.—Except as otherwise provided for in this section, nothing in this Act shall be construed as prohibiting an Indian tribe or tribal organization from imposing requirements, prohibitions, penalties or other measures to further the purposes of this Act that are in addition to the requirements, prohibitions, or penalties required under this Act.

(2) PUBLIC EXPOSURE TO SMOKE.—Nothing in the amendment made by title V shall be construed to preempt or otherwise affect any Indian tribe or tribal organization rule or practice that provides greater protection from the health hazards of environmental tobacco smoke.

(3) NATIVE AMERICANS.—A State may not impose obligations or requirements relating to the application of this Act to Indian tribes and tribal organizations.