Tobacco - Fazio

DEMOCRATIC CAUCUS
U.S. HOUSE OF REPRESENTATIVES

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NEWS

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CONGRESSMAN FAZIO INTRODUCES "HEALTHY KIDS ACT"

Says "Put Politics Aside" to Cut Youth Smoking in First Major Tobacco Bill Introduced in the House

Washington, D.C. -- House Democratic Caucus Chairman Vic Fazio (D-Calif.), flanked by House Minority Leader Dick Gephardt, Health and Human Services Secretary Donna Shalala, Sen. Kent Conrad (D-N.D.) and three area teenagers, today unveiled sweeping legislation designed to cut youth smoking by two-thirds by 2007.

The "Healthy Kids Act" is the first major bill introduced in the House of Representatives this year stemming from the proposed tobacco settlement. Modeled after Senator Conrad's legislation introduced last month in the Senate, Rep. Fazio's bill gives full authority to the FDA to regulate tobacco products, funds a strong anti-smoking advertising program, and provides no immunity to tobacco companies from lawsuits.

"Every day, 3,000 American children take up smoking; 1,000 of them will die prematurely," said Rep. Fazio, with a counter clicking off the number of new youth smokers today as a backdrop. "With Congress scheduled to meet for just 83 more legislative days this year, we cannot afford to let this historic opportunity to stop this epidemic fall victim to legislative largesse. We need to put politics aside and get the job done. The Senate is hard at work on finding solutions. The House should not be invisible on this critical issue."

Under the proposed bill, tobacco companies would be hit with penalties which could raise the price of cigarettes by $1.50 per pack. The legislation would require the tobacco industry to cough up a first-year $15 billion payment to settle state and local lawsuits and another $1 billion for asbestos-related suits. That penalty would not be tax deductible. Annual, tax-deductible payments would continue for 25 years, reaching $29.1 billion in the final year. These payments initially would be based on stock market capitalization and then on brand market share.

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Additional "look back" penalties would be levied if the number of children smoking does not drop by targeted goals during the next few years. The bill aims for a 20 percent reduction by the year 2001, 40 percent in 2003, 55 percent in 2005, and 67 percent by 2007.

Funds would be used to enact key components of programs outlined in President Clinton's State of the Union Address. Over five years, $16.5 billion will be directed to child care and early development and another $5 billion over five years will be spend to hire 100,000 teachers in an effort to reduce classroom size to 18 students per teacher in grades 1-3.

The legislation does not provide caps on liability, nor does it provide any special legal protection to tobacco companies. However, in exchange for providing funds to reimburse taxpayers for tobacco-related health costs and fund public health efforts, the bill settles current state and local government lawsuits (although governments can opt-out of the program to continue their lawsuits) and resolves asbestos and Castano lawsuits.

The Healthy Kids Act provides $27 billion in economic assistance over 25 years to tobacco growers and communities to adjust to the predicted drop in tobacco use.

Congressman Fazio chairs the House Democratic Caucus Tobacco Working Group.

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Tobacco FA210

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

Principles

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

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

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

- It must preserve the rights of individuals and groups to sue tobacco manufacturers for the damages they have caused, while at the same time establishing a manageable framework to ensure timely payment of awards and settlements to claimants.

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

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

Summary

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

I. ECONOMIC INCENTIVES

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

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

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

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

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

(youth prevalence measured by monthly use)

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

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

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

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

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

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

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

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

II. CHANGING HOW TOBACCO PRODUCTS ARE SOLD

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

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

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

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

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

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

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

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

III. OVERSIGHT AND ENFORCEMENT

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

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

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

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

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

IV. STOPPING CHILDREN FROM SMOKING BEFORE THEY START

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

Minorities

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

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

V. HELPING CURRENT SMOKERS KICK THE HABIT

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

VI. EXPANDING RESEARCH

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

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

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

VII. HELPING THE VICTIMS OF TOBACCO-RELATED DISEASES

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

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

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

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

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

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

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

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

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

VIII. ENDING TOBACCO INDUSTRY SECRECY

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

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

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

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

IX. TRANSITION ASSISTANCE TO FARMERS

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

X. ASSURING CLEAN INDOOR AIR

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

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

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

XI. STOPPING SMUGGLING AND SHOWING WORLD LEADERSHIP

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

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

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

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

XII. INDUSTRY CONSENT DECREES

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

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

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

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

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

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

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

- Not to advertise over the Internet; and,

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

XIII. ANNUAL TOBACCO PAYMENTS AND SPENDING

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

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

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

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

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