Tobacco - McCain - GW

AMENDMENTS TO CHAIRMAN'S MARK TO S. 1415

Tab

1. **McCain** - Chairman's mark to facilitate implementation of the settlement reached between the Attorneys General of the several States and manufacturers of tobacco products, and for other purposes [dist. 3/30].

   McCain (Burns)- To assist vending machine companies severely affected by lost sales due to elimination of cigarette vending machines [e-mailed 3/31, 12:24pm].

2. **Burns**- To provide for the permanent extension of income averaging for farmers [e-mailed 3/31, 10:10am].

   Burns- To ban the sale of tobacco products through the use of vending machines and to compensate the owners and operators of tobacco vending machines(with spending) [e-mailed 3/31, 10:10am].

   Burns- To ban the sale of tobacco products through the use of vending machines and to compensate the owners and operators of tobacco vending machines(without spending) [e-mailed 3/31, 10:10am].

   Burns- To transfer certain settlement proceeds to the Black Lung Disability Trust Fund, and for other purposes.

3. **Gorton**- To provide equity by requiring Indian tribes to collect state taxes on tobacco [e-mailed 3/31, 1:33pm].

   Gorton- 2nd amdt. re. Indian tribes [hc 3/31].

4. **Hutchison**- To maintain state funding for those states that have separate settlements [e-mailed, 1:30pm].

   Hutchison- To ensure that funds distributed to states by this Act are expended in accordance with state law and processes. [e-mailed, 1:30pm].

   Hutchison- To permit states that have reached separate settlements with tobacco companies to opt in the global settlement. [e-mailed, 1:30pm].

   Hutchison- To ensure that manufacturers who are compelled to share technology with their competitors are compensated fair market value for their property [e-mailed, 1:30pm].

Hutchison- To preserve limitation on liability independent of penalties assessed for failure to reach smoking cessation targets [e-mailed, 1:30pm].

Hutchison- To ensure that tobacco manufacturers bound by this act and meeting its requirements are not penalized for legal challenges brought by parties not bound by this Act [e-mailed, 1:30pm].

Hutchison- To ensure that Congress has the ability to review all regulations promulgated under this Act pursuant to its authority under the Congressional Review Act [e-mailed, 1:30 pm].

Hutchison- To require that a determination of attorneys fees by an arbitration panel under this Act offset any potential state liability for attorneys' fees [e-mailed, 3:02pm].

5. **Snowe**- To codify provisions relating to advertising and marketing [e-mailed 3/31, 3:08pm].

   Snowe- Sense of the Senate that proceeds of this Act may be used for purposes [e-mailed 3/31, 2pm; replacement e-mailed, 7:50pm].

6. **Ashcroft**- To delete all references to limitations of liability in the Chairman's mark [e-mailed 3/31, 12:31pm].

   Ashcroft- To provide legal standards and procedures for suppliers of raw materials and component parts for medical devices [e-mailed 3/31, 1:01pm].

   Ashcroft- To provide uniform standards for the awarding of compensatory and punitive damages in a civil action against a volunteer or volunteer service organization, and for other purposes [e-mailed 3/31, 1:01pm].

   Ashcroft- To establish legal standards procedures for product liability litigation [e-mailed 3/31, 1:01pm].

7. **Frist**- To establish a compliance bonus fund for states and retailers [e-mailed 3/31, 1pm].

8. **Brownback**- To provide for certain limitations on attorneys' fees under any global tobacco settlement [e-mailed 3/31, 12:14pm].

9. Hollings- To provide for the apportionment of the annual payment [e-mailed 3/31, 12:59pm].

Hollings- To strike subtitles A, B, and C of Title XI [hc, 3:32pm].

10. Inouye - To provide for the establishment of a Tobacco Asbestos Trust Fund [e-mailed 3/30].

Inouye - Amdt. to above amendment to provide for the establishment of a Tobacco Asbestos Trust Fund [e-mailed 3/31, 7:24pm].

11. Rockefeller - Sense of the Senate amdt. - reimbursing the VA for veterans' tobacco-related illness care and compensation [e-mailed 3/31].

Rockefeller- Re. Part VII-Recovery of Compensation Costs for tobacco-related disability or death, Chapter 91-Tort Liability for Disability or Death due to tobacco use [hc].

12. Kerry- To increase the industry payments to ensure that the payments are based on an average national retail price of a pack of cigarettes of $1.50 [e-mailed, 5:29pm].

Kerry- To increase the per-pack cost of cigarettes and reduce youth smoking [e-mailed, 5:11pm].

Kerry- (2nd) to increase the per-pack cost of cigarettes and reduce youth smoking [e-mailed, 5:11pm].

Kerry- To provide funds for certain child care programs, for asbestos-related injuries, and for vending machine manufacturers [e-mailed, 5:11pm].

Kerry- (2nd) to provide funds for certain child care programs. [e-mailed, 5:29pm].

Kerry- (3rd) to provide for the use of funds for certain child care programs [e-mailed, 5:11pm].

Kerry- (4th) to provide for the use of funds for child care and child development [e-mailed, 5:11pm].

Kerry- To assist in meeting the youth tobacco use reduction targets in this Act by strengthening the youth access compliance requirements for States to ensure that youths do not have access to tobacco products at retail outlets. [e-mailed, 5:11pm].

Kerry- Civil liability, Sec. 701 definitions.

13. Bryan- To strike provisions relating to credits for tort liability [e-mailed 3/31].

14. Dorgan (Rockefeller) - To provide liability limitations with respect to government claims for tobacco-related costs [rec'd hc, but wasn't e-mailed...computer failure].

Dorgan- To permit States to opt out of the liability limitations with respect to government claims for tobacco-related costs [rec'd hc, but wasn't e-mailed...computer failure].

Dorgan- To exclude punitive damage awards from the liability limitation cap [rec'd hc, but wasn't e-mailed...computer failure].

Dorgan- To strike the credit provision of the liability title [e-mailed 1:31pm].

Dorgan To strike the limited antitrust exemption [e-mailed 1:31pm].

Dorgan- To provide that the limitations on liability cease to apply in any year in which the non-attainment percentage exceeds 10% [e-mailed 1:31pm].

Dorgan- To disallow deductions for payments pursuant to trust agreement [rec'd hc, but wasn't e-mailed...computer failure].

Dorgan- To provide for the establishment and funding of a National Institutes of Health Trust Fund for Health Research [e-mailed 6:07pm].

15. Wyden- To strike provisions that permit States to opt out of the requirements relating to involuntary exposure to environmental tobacco smoke [e-mailed 6:15pm].

Wyden- To modify provisions relating to required reductions in the underage use of tobacco products [e-mailed 6:15pm].

16. Ford - #1 -To reduce annual payment amounts to those contained in June 20th agreement [e-mailed 6:10pm].

Ford - #2 - To reduce annual payment amounts to those contained in Clinton budget [e-mailed 6:10pm].

Ford - #3 - To treat the sale tobacco products overseas in the same manner as the sale of medical devices overseas [e-mailed 6:10pm].

Ford - #4 - To limit FDA authority to ban "new" tobacco products to those making therapeutic claims [e-mailed 6:10pm].

Ford - #5 - To strengthen the ban on FDA authority to regulate farms [e-mailed 6:10pm].

Ford - #6 - To give Congress more than 2 years to act on FDA banning nicotine in tobacco products [e-mailed 6:10pm].

Ford - #7 - To expand international restrictions to all devices, including those used by children [e-mailed 6:10pm].

Ford - #8 - To strike ban on cigarette sales in duty-free shops [e-mailed 6:10pm].

Ford - #9 - To make lookback penalties tax deductible [e-mailed 6:10pm].

Ford - #10 - To allow states longer period to opt out of second-hand smoke provisions [e-mailed 6:10pm].

Ford - #11 - To strike the second-hand smoke title, since the non-preemption [e-mailed 6:10pm].

Ford - #12 - To provide funding to small businesses to construct separately ventilated facilities [e-mailed 6:10pm].

Ford - #13 - To clarify the meaning of an advertising industry lawsuit [e-mailed 6:10pm].

Ford - #14 - To strike brand-specific penalties, which impose absurd penalties on manufacturers of brands with de minimum youth market shares [e-mailed 6:10pm].

Ford - #15 - To clarify chart on p. 103 to read "Required percentage reduction as a percentage of base incidence percentage in Underage Cigarette Use." [e-mailed 6:10pm]

Ford - #16 - To clarify chart on p. 104 to read "Required percentage reduction as a percentage of baseg incidence percentage in Underage Smokeless Tobacco Use" [e-mailed 6:10pm]

Ford - #17 - To allow states to use grant money for new Synar enforcement requirements [e-mailed 6:10pm].

Ford - #18 - To strike broad powers to sue of new super commission (p. 73-4; pp. 127-8) [e-mailed 6:10pm].

Ford - #19 - To ensure equitable treatment for small tobacco companies [e-mailed 6:10pm].

Ford - #20 - To add Secretary of Agricultre as Trustee of Trust Fund [e-mailed 6:10pm].

Ford - #21 - To add tobacco farmer representative as 5th member of Trust Fund Advisory Board [e-mailed 6:10pm].

Ford - #22 - To limit multiple labeling requirements in countries with their own labeling requirements [e-mailed 6:10pm].

Ford - #23 - Strike International Policing provisions of Title XI, Subtitle A [e-mailed 6:10pm].

Ford - #24 - To strike new criminal penalties (sec. 1103) [e-mailed 6:10pm].

Ford - #25 - To strike rewaqrd of criminal fine (sec. 1104) [e-mailed 6:10pm].

Ford - #26 - To limit eligibility of Depository Board Members to objective criteria [e-mailed 6:10pm].

Ford - #27 - To pay for creation of Depository out of settlement funds [e-mailed 6:10pm].

Ford - #28 - To apply existing penalties related to FDA in the event of the unauthorized release of documents received form the Depository [e-mailed 6:10pm].

Ford - #29 - To strike "no previous offense" language for exporters [e-mailed 6:10pm].

Ford - #30 - To strike sections 1144-5 creating new layer of permits [e-mailed 6:10pm].

Ford - #31 - To strike requirement that military installations charge highest possible price [e-mailed 6:10pm].

Ford - #32 - Remove language from Findings that stigmatizes smokers [e-mailed 6:10pm].

Ford - #33 - Conform finding on Tobacco Farmers to reflect that the bill will impact farmers and their communities [e-mailed 6:10pm].

Ford - #34 - Prohibits actions that would raise the minimum age to purchase and use tobacco products above the minimum age to purchase and use alcohol [e-mailed 6:10pm].

Ford - #35 - To provide that the relief for violations of the "Involuntary Exposure to Tobacco Smoke" title be to provide corrective action [e-mailed 6:10pm].

Ford - #36 - To limit FDA authority overseas to the proper labeling of tobacco products [e-mailed 6:10pm].

Ford - #37 - To provide equal treatment for all products made with child labor [e-mailed 6:10pm].

Ford - #38 - To strike manufacturer licensing provisions [e-mailed 6:10pm].

Ford - #39 - To limit funding for international initiatives to the general fund and to such sums as are provided through annual appropriations bills [e-mailed 6:10pm].

Ford - #40 - To remove limitation on USTR's authority to take action against discriminatory trade barriers [e-mailed 6:10pm].

Ford - #41 - To delete provisions related to export promotion and USTR authority [e-mailed 6:10pm].

Ford - #42 To delete federal labeling requirements [e-mailed 6:10pm].

Ford - #43 - Federal labeling of tabacco products for domestic use and for export; pricing of tobacco products on military installations [e-mailed 6:10pm].

Ford - #44 - To ensure that duty-free sales are governed by the same regulations as retail sales [e-mailed 6:10pm].

Ford - #45 - To limit "real" annual payments to $506 billion over 25 years, as the legislation has been publicly described [e-mailed 6:10pm].

Ford - #46 - To limit "real" annual payments to $506 billion over 25 years, as the legislation has been publicly described [e-mailed 6:10pm].

Ford - #47 - To eliminate requirements for black and white tobacco packages [e-mailed 6:10pm].

QUESTIONS REGARDING GLOBAL TOBACCO SETTLEMENT LEGISLATION

THE FOLLOWING IS THE FIRST SET IN A SERIES OF QUESTIONS PERTAINING TO S. 1415, LEGISLATION IMPLEMENTING THE GLOBAL TOBACCO SETTLEMENT PROPOSAL AGREED TO BY THE ATTORNEYS GENERAL OF THE VARIOUS STATES AND THE TOBACCO INDUSTRY.

QUESTIONS RELATED TO SPECIFIC LEGISLATIVE LANGUAGE SHOULD USE S. 1415 AS THE REFERENCE. ADDITIONAL QUESTIONS WILL FOLLOW.

I. BAN ON OUTDOOR ADVERTISING, INCLUDING IN STADIA AND ARENAS

The agreement (bill page 15) bans outdoor tobacco product advertising, and tobacco advertising in stadia and arena.

1. What data does the administration have to substantiate that a ban on outdoor advertising, including stadia and arenas will reduce smoking and, in particular, youth smoking?
   Primary responsibility: HHS

2. To what extent do you believe such restrictions be expected to reduce smoking?
   Primary responsibility: HHS

3. Does the administration support such a ban. If so, why? If not, why not?
   Primary responsibility: DOJ, HHS

4. What specific changes, if any, in the legislative language implementing the ban would the administration propose? Please provide specifics.
   Primary responsibility: DOJ, HHS

II. BAN ON HUMAN FIGURES AND CARTOON FIGURES IN ADVERTISING

The agreement (bill page 15) bans the use of human figures and cartoons in tobacco advertising.

1. What data does the administration have to substantiate that barring the use of human figures and cartoon advertising will reduce smoking, in particular, youth smoking?
   Primary responsibility: HHS

2. To what extent do you believe such restrictions can be counted on to reduce smoking?
   Primary responsibility: HHS

3. What entity would you propose to determine what constitutes a human image or cartoon character?
Primary responsibility: HHS

4. What penalty do you believe is appropriate and should accrue for a violation of the prohibition on material containing figures deemed to be human or cartoon?
Primary responsibility: HHS

5. Does the administration support this ban. If so, why? If not, why not?
Primary responsibility: DOJ, HHS

6. What specific changes, if any, in the legislative language implementing the ban would the administration propose? Please provide specifics.
Primary responsibility: DOJ, HHS

III. BAN ON INTERNET ADVERTISING

The agreement (bill page 16) bans tobacco advertising on the Internet.

1. Does the administration support such a ban? If so, why? If not, why not?
Primary responsibility: DOJ

2. How can and should a ban on Internet advertising of cigarettes be enforced?
Primary responsibility: DOJ

3. What, if any, concerns does the administration have regarding constitutional free speech issues raised by any such ban?
Primary responsibility: DOJ

4. What specific changes, if any, in the legislative language implementing the ban would the administration propose?
Primary responsibility: DOJ

IV. BAN ON POINT-OF-SALE ADVERTISING

The agreement (bill page 16) bans point-of-sale tobacco except for advertisements which comply with certain restrictions.

1. What data does the administration have to substantiate that a ban on point-of-sale advertising would reduce smoking, in particular, youth smoking?
Primary responsibility: HHS

2. Does the administration support such a ban? If so, why? If not, why not?

Primary responsibility: DOJ, HHS

3. Is the exemption of point-of-sale advertisement for adult stores and tobacco outlets appropriate?
Primary responsibility: DOJ, HHS

4. Is it appropriate to grant companies with greater cigarette market share additional point-of-sale advertising rights? If so, why? If not, why not?
Primary responsibility: DOJ, HHS

5. Does such a privilege constitute a statutorily granted competitive advantage? Please discuss.
Primary responsibility: DOJ

6. Does the administration support this grant? If so, why? If not, why not?
Primary responsibility: DOJ

7. What specific changes, if any, in the legislative language implementing the ban would the administration propose? Please provide specifics.
Primary responsibility: DOJ

V. LIMITATIONS ON POINT-OF-SALE ADVERTISING

The agreement (bill page 17) specifies the size and design of permissible point-of-sale advertising.

1. What data does the administration possess to suggest that such limitations will reduce smoking, particularly among youth?
Primary responsibility: HHS

2. Does the administration support this provision? If so, why? If not, why not?
Primary responsibility: DOJ, HHS

3. If so, what is the justification for statutorily determining a particular size limitation and for the particular size and restrictions proposed?
Primary responsibility: DOJ

4. What specific changes in legislative language, if any, does the administration propose? Please provide specifics.
Primary responsibility: DOJ

VI. BAN ON ADVERTISING RESTRICTION AGREEMENTS

The agreement (bill page 17) includes a prohibition on arrangements to limit the ability of a retailer to display permissible point-of-sale advertisement or promotional material originating with another manufacturer or distributor.

1. Are such agreements currently against federal or state law? If so, is such a provision necessary?
   Primary responsibility: DOJ

2. Does the administration support such a provision? If so, why? If not, why not?
   Primary responsibility: DOJ

3. Does the administration support the limitation. If so, why? If not, why not?
   Primary responsibility: DOJ

4. What specific changes, if any, in the legislative language implementing the ban would the administration propose?
   Primary responsibility: DOJ

VII. GLAMORIZATION OF TOBACCO

The agreement (bill page 20) prohibits payments to glamorize or promote the image or use of tobacco through print, films or live performance that appeals to individuals under 18 years of age.

1. What data does the administration possess to indicate whether and to what extent this provision will reduce smoking, particularly among youth?
   Primary responsibility: HHS

2. What entity does the administration propose will determine what activity constitutes promoting the image or use of a tobacco product?
   Primary responsibility: DOJ, HHS

3. How does the administration envision such a ban will be enforced?
   Primary responsibility: DOJ

4. Does the administration support such limitations?
   Primary responsibility: DOJ

5. What specific changes, if any, in the legislative language would the administration propose? Please provide specifics.
   Primary responsibility: DOJ

VIII. RESTRICTIONS ON COLOR ADVERTISEMENTS

The agreement (bill page 21) prohibits the use of color advertising except in adult publications.

1. What data does the administration have to substantiate that a ban on color ads, except in publications with limited youth readership, will reduce smoking, particularly youth smoking?
   Primary responsibility: HHS

2. Does the administration believe that the threshold for the restriction of two million readers is the appropriate threshold?
   Primary responsibility: HHS

3. How does the administration envision readership demographics being determined?
   Primary responsibility: HHS

4. How would this restriction be enforced?
   Primary responsibility: DOJ, HHS

5. Does the administration support this restriction? If so, why? If not, why not?
   Primary responsibility: DOJ

6. What specific changes, if any, in the legislative language implementing the restriction does the administration propose? Please provide specifics.
   Primary responsibility: DOJ

IX. GENERAL QUESTION REGARDING MARKETING/ADVERTISING BAN

1. Can the marketing and advertising restrictions envisioned in the settlement be constitutionally imposed, with or without the industry's consent? Please discuss.
   Primary responsibility: DOJ

X. WARNING LABELS

The agreement (bill pages 26-28) authorizes a variety of new warning labels for tobacco products.

1. Does the administration believe that these are appropriate warning labels?
   Primary responsibility: DOJ, HHS

2. Does the administration possess data suggesting that these warnings will

effectively reduce smoking, particularly youth smoking?
Primary responsibility: HHS

3. What data suggests that the various new warnings will be as or more effective than the current warning requirements?
Primary responsibility: HHS

4. Does the administration support the provisions authorizing specific new labels? If so, why? If not, why not?
Primary responsibility: DOJ, HHS

5. What specific changes, if any, in the legislative language implementing this provision would the administration propose? Please provide specifics.
Primary responsibility: DOJ, HHS

IX. WARNING LABEL SIZE AND LOCATION REQUIREMENTS

The agreement (bill page 28-29) specifies, the size, placement and print type of the various tobacco warning labels.

1. What data does the administration have to suggest that these specifications will reduce smoking, particularly youth smoking?
Primary responsibility: HHS

2. Does the administration support these particular specifications? If so, why? If not, why not?
Primary responsibility: DOJ, HHS

3. Does the administration support the exception (page 29) provided for flip-top cigarette packages? If so, why? If not, why not?
Primary responsibility: DOJ

4. What specific changes, if any, in the legislative language to implement these restrictions would the administration propose? Please provide specifics.
Primary responsibility: DOJ

X. SMOKELESS TOBACCO ALTERNATIVE LABELS

The agreement (bill page 34) provides for various new warning label options for smokeless tobacco.

1. What data does the administration have to suggest that the various new warning labels will effectively reduce the use of smokeless tobacco, particularly among youth?
Primary responsibility: HHS

2. Does the administration support the use of these alternative labels?
Primary responsibility: DOJ, HHS

3. What changes, if any, to the legislative language implementing this provision would the administration propose? Please provide specifics.
Primary responsibility: DOJ

XI. ENFORCEMENT OF ADVERTISING, MARKETING AND LABELING RESTRICTIONS

The agreement (bill page 36-37) provides for the enforcement of advertising, marketing and labeling restrictions.

1. Does the administration support the enforcement provisions regarding advertising, marketing and labeling? If so why? If not, why not?
Primary responsibility: DOJ, HHS

2. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specific language.
Primary responsibility: DOJ, HHS

XII. PREEMPTION OF STATE AND LOCAL ACTION

The agreement (bill page 38) prohibits state and local requirements related to the packaging or advertising of cigarettes or smokeless tobacco.

1. Does the administration support such preemption? If so, why? If not, why not?
Primary responsibility: DOJ

2. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specific language.
Primary responsibility: DOJ

XIII. EXEMPTION OF EXPORTS

The agreement (bill page 40) exempts exports from the packaging, labeling and advertising requirements.

1. Does the administration support this exemption? If so, why? If not, why not?
   Primary responsibility: NEC

2. What ramifications does this provision have in the area of foreign relations?
   Primary responsibility: NEC

3. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.
   Primary responsibility: NEC

XIV. RESTRICTION ON ACCESS TO TOBACCO PRODUCTS

The agreement (bill page 40-41), prohibits the sale of tobacco products to individuals under 18 years of age, requires that retailers verify the age of individuals purchasing tobacco, and exempts individuals 27 years of age or older from the photo identification requirement.

1. Does the administration support these provisions? If so, why? If not, why not?
   Primary responsibility: DOJ, HHS

2. How does the administration envision that this provision will be enforced and can it be enforced effectively?
   Primary responsibility: DOJ, HHS

3. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.
   Primary responsibility: DOJ, HHS

XV. PROHIBITION ON SALE OF LESS THAN A FULL PACK OF CIGARETTES

The agreement (bill page 41) prohibits the sale of less than a full pack of cigarettes.

1. Does the administration support this prohibition? If so, why? If not, why not?
   Primary responsibility: DOJ

2. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.
   Primary responsibility: DOJ

XVI. STATE LICENSURE TO SELL TOBACCO

The agreement, (bill page 44) requires states to license sellers of tobacco products.

1. What data, if any, does the administration have to indicate that licensure will effectively reduce access to tobacco by minors?
   Primary responsibility: HHS

2. What entity does the administration envision would enforce the licensure requirement if a state should be unable or unwilling to implement the licensure program?
   Primary responsibility: DOJ, HHS

3. Has the administration developed or formulated the cost of the licensure program? If so, why? If not, why not?
   Primary responsibility: HHS, Treasury

4. Does the administration support the licensure program? If so, why? If not, why not?
   Primary responsibility: HHS

5. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.
   Primary responsibility: DOJ, HHS

XVII. ANTI-TRUST EXEMPTION

The agreement, (bill page 94), provides anti-trust exemption for the tobacco industry.

1. Does the administration support such an exemption? If so, why? If not, why not?
   Primary responsibility: DOJ

2. Could such an exemption be used to set prices beyond those necessary to deter youth smoking, but to increase profits for the industry?
   Primary responsibility: DOJ

3. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.
   Primary responsibility: DOJ

XVIII. APPLICABILITY TO NEW ENTRANTS IN TOBACCO INDUSTRY

1. Under the agreement, and the implementing legislation, what is the assurance that new entrants into the tobacco industry will comply with the statute and any related consent agreements not to challenge the legality of the agreement implementation

legislation.
Primary responsibility: DOJ

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Tobacco McCain

appoint advisory panel / Govs

- April 4

farmers stats

SENATE COMMERCE COMMITTEE AMENDMENTS –
TO S. 1415
APRIL 1, 1998

Amendment offered by	Subject	Result
Burns	Bans the sale of tobacco products through vending machines with compensation	approved by voice
Hutchinson	Manufacturers who must share technology w/ competitors are compensate	approved by voice
Hutchinson	Requires Congressional Review of FDA regulations	set aside for additional work (see pg. 3)
Ford	Strengthens the ban on FDA authority to regulate farmers	approved by voice
Snowe	Codifies advertising and marketing restrictions that are reached by agreements	defeated [5-14]
Frist	Establishes a compliance bonus fund for states and retailers & repeals Synar Amend.	approved by voice
Ford	Eliminate brand-specific penalties on brands with de minimis youth market shares	set aside
Ford	Re-labeled two charts to indicate they refer to percentage reductions of percentage bases	approved by voice
Wyden	Requires company-based look back provisions	withdrawn
Burns	Establishes a Black Lung Disability Trust Fund with tobacco funds	withdrawn
Snowe	Sense of the Senate: Distribution of funds	approved by voice
Hutchinson	Requires funds be distributed in accordance with state law	withdrawn
Ashcroft	Extends liability protections to volunteer organizations	defeated by voice
Ashcroft	Sets legal standards and procedures for raw materials producers	defeated [3-13]
Ashcroft	Establishes legal standards for product liability legislation	defeated [2-16]

Dan Uebig

Amendment offered by	Subject	Result
Ashcroft	Eliminates liability caps/Strike Title VII	defeated [2-16]
Ford	Reduces annual payments to those contained in the President's budget	defeated [4-13]
Ford	Limits annual payments to $506 billion over 25 years	set aside
Ashcroft	Strikes Title 7, which defines liability protections	defeated [2-16]
Dorgan	Excludes punitive damage awards from liability limitation caps	defeated [4-15]
Kerry	Allows states to use their own funds to supplement federal child care program	approved by voice
Kerry	Requires industry payments that would equal $1.50 per pack	defeated by voice
Ford	Eliminates requirement for up-front penalty payment of $10 billion	defeated [1-14]
Wyden	Strikes provision to allow states to opt out of ETS relief requirements	defeated by voice
Rockefeller	Sense of the Senate - VA should be reimbursed for costs of treating tobacco related diseases	approved by voice
Gorton	Limits definition of Indian Tribes	approved by voice
Gorton	Requires Indian Tribes to collect federal and state tobacco tax	approved [10-9]
Breaux	Permits claimants to be paid by insurance companies if manufacturer cannot pay a claim	approved by voice
Hutchinson	Permits states that have reached separate settlements with tobacco companies to opt in to the global settlement	approved by voice

Amendment offered by	Subject	Result
Brownback	Limits attorneys' fees to $250/hour	withdrawn
Dorgan	Establishes and funds a Trust Fund for Health Research at NIH	defeated by voice
Dorgan	Strikes antitrust exemption	defeated [4-15]
Inouye	Establishes but does not fund an Asbestos Trust Fund	approved by voice
Hutchinson	Congressional review of regulations applies	approved by voice
Hutchinson	Congress deems current FDA regulations in effect, but does not affect regulation in litigation	defeated by voice
Ford	Changes fee schedule for small smokeless tobacco companies	approved by voice
Ford	Applies existing penalties related to FDA if documents are released from depository	approved by voice

Anti trust
Penalties
ETS
Bankruptcy
Smuggling
Spending
Bankruptcy

Amendment offered by	Subject	Result
Bums	Bans the sale of tobacco products through vending machines with compensation	approved by voice
Hutchinson	Manufacturers who must share technology w/ competitors are compensate	approved by voice
Hutchinson	Requires Congressional Review of FDA regulations	amended and approved by voice
Ford	Strengthens the ban on FDA authority to regulate farmers	approved by voice
Snowe	Codifies advertising and marketing restrictions that are reached by agreements	defeated [5-14]
Frist	Establishes a compliance bonus fund for states and retailers & repeals Synar Amend.	approved by voice
Ford	Eliminate brand-specific penalties on brands with de minimis youth market shares	set aside
Ford	Re-labeled two charts to indicate they refer to percentage reductions of percentage bases	approved by voice
Wyden	Requires company-based look back provisions	withdrawn
Burns	Establishes a Black Lung Disability Trust Fund with tobacco funds	withdrawn
Snowe	Sense of the Senate: Distribution of funds	approved by voice
Hutchinson	Requires funds be distributed in accordance with state law	withdrawn
Ashcroft	Extends liability protections to volunteer organizations	defeated by voice
Ashcroft***	other liability amendments***	defeated***
Ford	Limits annual payments to $506 billion over 25 years	set aside
Ashcroft	Strikes Title 7, which defines liability protections	defeated [2-16]

Dorgan	Excludes punitive damage awards from liability limitation caps.	defeated [4-15]
Kerry	Allows states to use their own funds to supplement federal child care program	approved by voice
Kerry	Requires industry payments that would equal $1.50 per pack	defeated by voice
Ford	Eliminates requirement for up-front penalty payment of $10 billion	defeated [1-14]
Wyden	Strikes provision to allow states to opt out of ETS relief requirements	defeated by voice
Rockefeller	Sense of the Senate - VA should be reimbursed for costs of treating tobacco related diseases	approved by voice
Gorton	Limits definition of Indian Tribes	approved by voice
Gorton	Requires Indian Tribes to collect federal and state tobacco tax	approved [10-9]
Breaux	Permits claimants to be paid by insurance companies if manufacturer cannot pay a claim	approved by voice
Hutchinson	Permits states that have reached separate settlements with tobacco companies to opt in to the global settlement	approved by voice
Brownback	Limits attorneys' fees to $250/hour	withdrawn
Dorgan	Establishes and funds a Trust Fund for Health Research at NIH	defeated by voice
Dorgan	Strikes antitrust exemption	defeated [4-15]
Inouye	Establishes but does not fund an Asbestos Trust Fund	approved by voice
Hutchinson	Congressional review of regulations applies	approved by voice
Hutchinson	Congress deems current FDA regulations in effect, but does not affect regulation in litigation	defeated by voice
Ford	Applies existing penalties related to FDA if documents are released from depository	approved by voice

AMENDMENT NO. ____ Calendar No. ____

Purpose: To ban the sale of tobacco products through the use of vending machines and to compensate the owners and operators of tobacco vending machines.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1415

To facilitate implementation of the settlement reached between the Attorneys General of the several States and manufacturers of tobacco products, and for other purposes.

Referred to the Committee on ______________________
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BURNS

Viz:

At the appropriate place in title XI, add the following:

Subtitle ____—Ban On Sale Of Tobacco Products Through The Use Of Vending Machines

SEC. ____. BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.

(a) BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.—Effective 12 months after the date of enactment of this Act, it shall be unlawful to sell tobacco products through the use of a vending machine.

(b) COMPENSATION FOR BANNED VENDING MACHINES.—

(1) IN GENERAL.—The owners and operators of tobacco vending machines shall be reimbursed for the fair market value of their businesses, including the cost of banned vending machines, compensation for lost profits, unexpired contracts, and for the owner's or operator's plant and equipment.

(2) TOBACCO VENDING REIMBURSAL CORPORATION.—

(A) CORPORATION.—Reimbursal shall be directed through the private, nonprofit corporation established in the District of Columbia, known as the Tobacco Vending Reimbursal Corporation (in this section referred to as the "Corporation"). The Corporation is—

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

(ii) except as otherwise provided in this section, is subject to, and has 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) DUTIES.—The Corporation shall—

(i) disburse compensation funds to vending companies under this section;

(ii) verify operational machines; and

(iii) maintain complete records of machine verification and accountings of disbursements and administration of the compensation fund established under paragraph (4).

(3) MANAGEMENT OF CORPORATION.—

(A) BOARD OF DIRECTORS.—The Corporation shall be managed by a Board of Directors that—

(i) consists of distinguished Americans with experience in finance, public policy, or fund management;

(ii) includes at least 1 member of the United States tobacco vending machine industry;

(iii) shall be paid an annual salary on an individualized basis of $40,000 out of amounts transferred to the Corporation under paragraph (4)(A);

(iv) shall appoint a President to manage the day-to-day activities of the Corporation;

(v) shall develop guidelines by which the President shall direct the Corporation;

(vi) shall retain a national accounting firm to verify the distribution of funds and audit the compensation fund established under paragraph (4);

(vii) shall retain such legal, management, or consulting assistance as is necessary and proper; and

(viii) shall periodically report to Congress regarding the activities of the Corporation.

(B) DUTIES OF THE PRESIDENT OF THE CORPORATION.—The President of the Corporation shall—

(i) hire appropriate staff;

(ii) prepare the report of the Board of Directors of the Corporation required under subparagraph (A)(viii); and

(iii) oversee Corporation functions, including verification of machines, administration and disbursement of funds, maintenance of complete records, operation of appeals procedures, and other directed functions.

(4) COMPENSATION FUND.—

(A) TRANSFER OF FUNDS FROM TOBACCO INDUSTRY PAYMENTS.—Not later than 30 days after the date of enactment of this Act, the Secretary of the Treasury shall transfer to the Corporation, out of funds paid to the United States by the tobacco industry, such sums as are necessary to make due compensation to owners and operators of tobacco vending machines and to carry out the duties of the Corporation. Not later than 1 year after such date, the Secretary of the Treasury shall transfer to the Corporation out of funds paid to the United States by the tobacco industry, such additional sums as may be necessary for such purposes.

(B) RULES FOR DISBURSEMENT OF FUNDS.—

(i) PAYMENTS TO OWNERS AND OPERATORS.—The Corporation shall disburse funds to compensate the owners and operators of tobacco vending machines in accordance with the following:

(I) The fair market value of each tobacco vending machine verified by the Corporation President in accordance with subparagraph (C), and proven to have been in operation before August 10, 1995, shall be disbursed to the owner of the machine seeking compensation.

(II) No compensation shall be made for a spiral glass front vending machine.

(ii) OTHER PAYMENTS.—Funds transferred to the Corporation under subparagraph (A) may be used to pay the administrative costs of the Corporation that are necessary and proper or required by law. The total amount paid by the Corporation for administrative and overhead costs, including accounting fees, legal fees, consultant fees, and associated administrative costs shall not exceed 5 percent of the total amount transferred to the Corporation under subparagraph (A).

(C) VERIFICATION OF VENDING MACHINES.—Verification of vending machines shall be based on copies of official State vending licenses, company computerized or handwritten sales records, or physical inspection by the Corporation President or by an inspection agent designated by the President. The Corporation President and the Board of Directors of the Corporation shall work vigorously to prevent and prosecute any fraudulent claims submitted for compensation.

(D) RETURN OF ACCOUNT FUNDS NOT DISTRIBUTED TO VENDORS.—The Corporation shall be dissolved on the date that is 4 years after the date of enactment of this Act. Any funds not dispersed or allocated to claims pending as of that date shall be transferred to a public anti-smoking trust, or used for such other purposes as Congress may designate.

(c) SETTLEMENT OF LEGAL CLAIMS PENDING AGAINST THE UNITED STATES.—Acceptance of a compensation payment from the Corporation by a vending machine owner or operator shall settle all pending and future claims of the owner or operator against the United States that are based on, or related to, the ban of the use of tobacco vending machines imposed under this section and any other laws or regulations that limit the use of tobacco vending machines.

Amendment No.____ **Calendar No.____**

Amendment to Committee Amendment to S. 1415

Purpose: ensure that manufacturers who are compelled to share technology with their competitors are compensated fair market value for their property

In the Committee on Commerce, Science, and Transportation

Amendment to be proposed by Mrs. Hutchison

Viz:

On page 61, line 15, strike the following:

commercially reasonable fee by

and insert the following:

fair market value to the owner of the technology and to assess an equitable portion of that amount to

On page 61, line 18, strike the following:

to the manufacturer that submits the notice under paragraph (1) for such technology.

and insert the following:

. (period)

Ford Amendment #5. Purpose: To strengthen the ban on FDA authority to regulate farms

(1) On page 26, line 21, INSERT ", tobacco warehouses," after the word "growers";

(2) On page 26, on line 22, after "cooperatives" but before the period, add the following: ", nor shall any employee of the Food and Drug Administration have any authority whatsoever to enter onto a farm owned by a tobacco grower without the written consent of such tobacco grower"; and

(3) On page 27, STRIKE line 1 beginning with "The" through line 5 and INSERT the following:

"Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations to any matter that involves the production or tobacco leaf or a producer thereof."

AMENDMENT NO. ____ Calendar No. ____

Purpose: To codify provisions relating to advertising and marketing.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1415

To facilitate implementation of the settlement reached between the Attorneys General of the several States and manufacturers of tobacco products, and for other purposes.

Referred to the Committee on ______________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Ms. SNOWE

Viz:

At the end of title I, add the following:

Subtitle C—Application of Advertising and Marketing Restrictions

SEC. 131. ADVERTISING PROVISIONS IN PROTOCOL.

(a) IN GENERAL.—NO TOBACCO PRODUCT SHALL BE SOLD OR DISTRIBUTED IN THE UNITED STATES—

(1) unless its advertising and labeling (including the package)—

(A) contain no human image, animal image, or cartoon character;

(B) are not outdoor advertising, including advertising in enclosed stadia and advertising from within a retail establishment that is directed toward or visible from the outside of the establishment;

(C) are accompanied by a disclaimer in the advertising that words such as "light" or "low tar" describing the product do not render the product less hazardous than any other tobacco product, in addition to such other requirements as the Secretary may impose;

(D) at the time the advertising or labeling is first used is submitted to the Secretary so that the Secretary may conduct regular review of the advertising and labeling;

(E) comply with any applicable requirement of the Federal Food, Drug, and Cosmetic Act and the Federal Cigarette Labeling and Advertising Act;

(F) do not appear on the international computer network of both Federal and non-Federal interoperable packet switches data networks (the 'Internet'), unless such advertising is designed to be inaccessible in or from the United States to all individuals under the age of 18 years;

(G) use only black text on white background, other than (i) those locations where self-service displays are permitted under subsection (a)(3) of section 545, if the advertising is not visible from outside the establishment and is affixed to a wall or fixture in the establishment, and (ii) advertisements appearing in any publication which the manufacturer, distributor, or retailer demonstrates to the Secretary is a newspaper, magazine, periodical, or other publication whose readers under the age of 18 years constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence, and that is read by less than 2 million persons under the age of 18 years as measured by competent and reliable survey evidence;

(H) for video formats, use only static black text on a white background, and any accompanying audio uses only words without music or sound effects; and

(I) for audio formats, use only words without music or sound effects;

(2) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification of the tobacco product is contained in a movie, program, or video game for which a direct or indirect payment has been made to ensure its placement;

(3) if a direct or indirect payment has been made by any manufacturer, distributor, or retailer to any entity for the purpose of promoting the image or use of a tobacco product through print or film media that appeals to individuals under the age of 18 years or through a live performance by an entertainment artist that appeals to such individuals;

(4) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia or product identification identical to, similar to, or identifiable with the tobacco product is used for any item (other than a tobacco product) or service marketed, licensed, distributed or sold or caused to be marketed, licensed, distributed, or sold by the manufacturer or distributor of the tobacco product;

(5) unless its package label and advertising bear the product's established name and a statement of its intended use, as follows:

(A) Cigarettes—A Nicotine—Delivery Device;

(B)Cigarette Tobacco-A Nicotine Delivery Device; or

(C) Loose Leaf Chewing Tobacco, Plug Chewing Tobacco, Twist Chewing Tobacco, Moist Snuff, or Dry Snuff, whichever is appropriate for the product, followed by the words "A Nicotine—Delivery Device";

(6)(A) except as provided in subparagraph (B), if advertising or labeling for such product that is otherwise in accordance with the requirements of this section bears a tobacco product brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification and is disseminated in a medium other than newspapers, magazines, periodicals or other publications (whether periodic or limited distribution), nonpoint-of-sale promotional material (including direct mail), point-of-sale promotional material, or audio or video formats delivered at a point-of-sale; but

(B) notwithstanding subparagraph (A), advertising or labeling for cigarettes or smokeless tobacco may be disseminated in a medium that is not specified in paragraph (1) if the manufacturer, distributor, or retailer notifies the Secretary not later than 30 days prior to the use of such medium, and the notice describes the medium and the extent to which the advertising or labeling may be seen by persons under the age of 18 years.

(b) COLOR PRINT ADS ON MAGAZINES.—No tobacco product may be sold or distributed in the United States unless advertising for that product appears in other than any color, or combination of colors, on the outside back cover of a magazine the readership of which, as determined by the Secretary, consists primarily of individuals who are 18 years of age or older.

SEC. 132. POINT-OF-SALE RESTRICTIONS.

(a) IN GENERAL.—Except as provided in subsection (b), no manufacturer, distributor, or retailer shall engage in point-of-sale advertising of any tobacco product in any retail establishment (other than an establishment that sells only tobacco products) in which an individual under the age of 18 years of age is present, or permitted to enter, at any time.

(b) EXCEPTION.—

(1) IN GENERAL.—A retailer may place 1 point-of-sale advertisement in or at each such location for its brand or the contracted house retailer or private label brand of its wholesaler.

(2) DISPLAY AREA.—The display area of any such point-of-sale advertisement (either individually or in the aggregate) shall not be larger than 576 square inches and shall consist of black letters on white background or another recognized typography.

(3) LIMITATION.—Any such point-of-sale advertisement shall not be attached to or located within 2 feet of any display fixture on which candy is displayed for sale.

(c) AUDIO AND VIDEO.—Any audio or video format permitted under regulations promulgated by the Secretary may be distributed at the time of sale of a tobacco product to individuals over the age of 18 years, but no such format may be played or shown in or at any location where tobacco products are offered for sale.

(d) PROHIBITION ON LIMITATION ARRNAGEMENTS.—No manufacturer or distributor of tobacco products may enter into any arrangement with a retailer that limits the retailer's ability to display any form of advertising or promotional material originating with another supplier and permitted by law to be displayed in a retail establishment.

(e) DEFINITION.—As used in this section, the terms "point-of-sale advertisement" and "point-of-sale advertising" mean all printed or graphical materials bearing the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco, which, when used for its intended purpose, can reasonably be anticipated to be seen by customers at a location where tobacco products are offered for sale.

SEC. 133. SUNSET PROVISION.

The provisions of this subtitle shall cease to apply beginning on the date on which all tobacco manufacturers to which this Act applies have entered into the Protocol.

Approved - voice vote

AMENDMENT NO. CAL. NO.

[STAFF WORKING DRAFT]

March 31, 1998

COMMITTEE AMENDMENT

Purpose: To establish a compliance bonus fund for States and retailers.

IN THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION—105TH Cong., 2D Sess.

S. 1415, 105TH Congress, 2D Session

APRIL 1, 1998

INTENDED to be proposed by Mr. FRIST

Viz:

On page 108, line 12, strike "10" and insert "5".

On page 108, line 15, strike "10" and insert "5".

On page 108, between lines 23 and 24, insert the following:

(3) The Secretary shall retain 5 percent of all penalties paid and not refunded and credit that amount to the Compliance Bonus Account for States and Retailers.

On page 119, beginning with line 21 and strike through line 17 on page 126, and insert the following:

SEC. 211. COMPLIANCE BONUS FUND.

(a) ESTABLISHMENT.THERE IS ESTABLISHED WITHIN THE NATIONAL TOBACCO SETTLEMENT TRUST FUND ESTABLISHED BY SECTION 401 A SEPARATE ACCOUNT TO BE KNOWN AS THE COMPLIANCE BONUS ACCOUNT FOR STATES AND RETAILERS.

(b) CREDITS TO ACCOUNT.—For each fiscal year there shall be credited to the Account an amount equal to—

(1) 5 percent of the amounts available for expenditure or obligation under section 202; and

(2) any amounts returned under section 213 as penalty payments.

SEC 212. BLOCK GRANTS.

(a) IN GENERAL.—The Secretary shall award block grants to States determined to be eligible under subsection (b).

(b) ELIGIBLE STATES.—To be eligible to receive a grant under subsection (a), a State 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; and

(2) with respect to the year involved, demonstrate to the satisfaction of the Secretary that fewer than 5 percent of all individuals under 18

years of age who attempt to purchase tobacco products in the State in such year are successful in such purchase.

(c) PAYOUT; USE OF FUNDS.—

(1) ANNUAL DISTRIBUTION.—For each fiscal year in which one or more States is eligible to receive a grant under this section, the Secretary shall pay out the balance in the account established under section 211(a) as of the end of the preceding fiscal year.

(2) PAYMENT TO STATE.—If more than one State is eligible to receive a grant under this section for any fiscal year, the amount payable for that fiscal year shall be apportioned among such eligible States on the basis of population.

(3) USE OF FUNDS.—Each State that receives a grant under this section shall distribute half of the amount received among retail outlets of tobacco products that, for fiscal year for which the State met the requirements of subsection (b), have outstanding records of compliance with the restrictions on underage sales of tobacco products.

SEC. 213. STATE ENFORCEMENT INCENTIVES.

(a) IN GENERAL.—

(1) ACTIVITIES AND REPORTS REGARDING ENFORCEMENT.—A State shall—

(A) conduct monthly random, unannounced inspections of sales or distribution outlets in the State to ensure compliance with a law prohibiting sales of tobacco products to individuals under 18 years of age;

(B) annually submit to the Secretary a report describing—

(i) the activities carried out by the State to enforce underage access laws during the fiscal year; and

(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18 years; and

(C)(i) a detailed description of how the inspections described in subparagraph (A) were conducted and the methods used to identify outlets, with appropriate protection for the confidentiality of information regarding the timing of inspections and other investigative techniques whose effectiveness depends on continued confidentiality;

(ii) the identity of the single State agency designated by the Governor of the State to be responsible for the implementation of the requirements of this section.

(2) MINIMUM INSPECTION SCHEDULE.—In order to meet the requirements of paragraph (1)(A), inspections conducted by the State shall include at least 250 random, unannounced inspections of retail sale outlets annually for each 1,000,000 persons resident in the State, as most recently determined by the Bureau of the Census. Such inspections shall cover a range of outlets (not preselected on the basis of prior violations) to measure overall levels of compliance as well as to identify violations, and shall be conducted to provide a probability sample of outlets. The sample must reflect the distribution of the population under the age of 18 years throughout the State and the distribution of the outlets throughout the State accessible to youth. Indian tribes shall conduct such inspections monthly of at least 1 retail outlet subject to their jurisdiction for each 4,000 reservation residents. Except as provided in this paragraph, any reports required by this paragraph shall be made public. As used in this paragraph, the term "outlet" refers to any location that sells at re-

tail or otherwise distributes tobacco products to consumers, including to locations that sell such products over-the-counter.

(b) NONCOMPLIANCE.—The Secretary shall withhold from any State that fails to meet the requirements of subsection (a) or to demonstrate a compliance rate of—

(1) at least 75 percent in the fifth and sixth fiscal years after the date of enactment of the Tobacco Products Control Act of 1998;

(2) at least 85 percent in the seventh, eighth, and ninth fiscal years after such date; and

(3) at least 90 percent in every fiscal year beginning with the tenth fiscal year after such date,

an amount equal to 5 percent of all amounts otherwise payable under section 202 (e) to any State for that fiscal year.

(c) DEFINITION.—For the purposes of this section, the term "first applicable fiscal year" means the first fiscal year beginning after the fiscal year in which funding is made available to the States under this section.

(f) RELEASE AND DISBURSEMENT.—

(1) Upon notice from the Secretary that an amount payable under section 202(e) has been ordered withheld under subsection (b), a State may petition the Secretary for a release and disbursement

of up to 75 percent of the amount withheld, and shall give timely written notice of such petition to the attorney general of that State and to all tobacco product manufacturers.

(2) The agency shall conduct a hearing on such a petition, in which the attorney general of the State and tobacco product manufacturers may participate and be heard.

(3) The burden shall be on the State to prove, by a preponderance of the evidence, that the release and disbursement should be made. The Secretary's decision on whether to grant such a release, and the amount of any such disbursement, shall be based on whether—

(A) the State has acted in good faith and in full compliance with this Act, and any rules or regulations promulgated under this Act;

(B) the State has pursued all reasonably available measures to attain the compliance rates and required percentage reductions applicable in the year for which the release is being sought;

(C) there is evidence of any direct or indirect action by the State to undermine the achievement of the compliance rates, the required percentage reductions, or other terms and objectives of this Act or the Tobacco Products Control Act of 1998; and

(D) any other relevant evidence.

(4) A State shall be entitled to interest on any withheld amount released at the average United States 52-Week Treasury Bill rate for the period between the withholding of the amount and its release.

(5) Any State attorney general or tobacco product manufacturer aggrieved by a final decision on a petition filed under this subsection may seek judicial review of such decision within 30 days in the United States Court of Appeals for the District of Columbia Circuit. Unless otherwise specified in this Act, judicial review under this section shall be governed by sections 701 through 706 of title 5, United States Code.

(6) No stay or other injunctive relief enjoining a reduction in a State's allotment pending appeal or otherwise may be granted by the Secretary or any court.

SEC. 214. CONFORMING CHANGE.

Section 1926 of the Public Health Service Act (42 U.S.C. 300x—26) is hereby repealed.

○

Set aside

Ford Amendment #14. Purpose: To strike brand-specific penalties, which impose absurd penalties on manufacturers of brands with de minimus youth market shares

(1) On page 110, line 5 through page 115, line 11, strike all of section 203; and

(2) On page 115, line 12, strike "204" and insert "203"

Accepted voice vote

Ford Amendment #16. Purpose: To clarify chart on p.104 to read "Required percentage reduction as a percentage of base incidence percentage in Underage Smokeless Tobacco Use"

On page 104, in the chart appearing at the top of the page, strike "Required Percentage Reduction in Underage Smokeless Tobacco Use" from the heading of the right column of such chart, and insert the following: "Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Smokeless Tobacco Use"

AMENDMENT NO. ____ Calendar No. ____

Purpose: To modify provisions relating to required reductions in the underage use of tobacco products.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1415

To facilitate implementation of the settlement reached between the Attorneys General of the several States and manufacturers of tobacco products, and for other purposes.

Referred to the Committee on ______________
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. WYDEN

Viz:

Strike subtitle A of title II and insert the following:

Subtitle A—Reduction in Underage Tobacco Use

SEC. 201. PURPOSE.

It is the purpose of this subtitle to encourage the achievement of reductions in the number 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. 202. CHILD TOBACCO USE SURVEYS.

(a) ANNUAL PERFORMANCE SURVEY.—Not later than 1 year after the date of the enactment of this title and annually thereafter the Secretary shall conduct a survey to determine the number of children including minority children who used each manufacturer's tobacco products within the past 30 days.

(b) EXCLUSION OF CERTAIN AGES.—The Secretary may 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.—The baseline level of the child tobacco product use of a manufacturer (referred to in this subtitle as the "baseline level") is the number of children determined to have used the tobacco products 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) DEFINITION.—As used in this subtitle, the term "tobacco product" means cigarettes, smokeless tobacco products, cigars, and roll-your-own tobacco products.

SEC. 203. REDUCTION IN UNDERAGE TOBACCO PRODUCT USAGE.

(a) STANDARDS FOR EXISTING MANUFACTURERS.—Each manufacturer which manufactured a tobacco product on or before the date of the enactment of this title shall reduce the number of children including minority children who use its tobacco products so that the number of overall children determined to have used its tobacco products on the basis of—

(1) the third annual performance survey is equal to or less than—

(A) 70 percent of the manufacturer's baseline level; or

(B) the de minimis level;

whichever is greater;

(2) the fourth annual performance survey is equal to or less than—

(A) 60 percent of the manufacturer's baseline level; or

(B) the de minimis level;

whichever is greater;

(3) the fifth annual performance survey is equal to or less than—

(A) 50 percent of the manufacturer's baseline level; or

(B) the de minimis level;

whichever is greater;

(4) the sixth annual performance survey is equal to or less than—

(A) 40 percent of the manufacturer's baseline level; or

(B) the de minimis level;

whichever is greater;

(5) the seventh annual performance survey is equal to or less than—

(A) 35 percent of the manufacturer's baseline level; or

(B) the de minimis level;

whichever is greater;

(6) the eighth annual performance survey is equal to or less than—

(A) 30 percent of the manufacturer's baseline level; or

(B) the de minimis level;

whichever is greater;

(7) the ninth annual performance survey is equal to or less than—

(A) 25 percent of the manufacturer's baseline level; or

(B) the de minimis level;

whichever is greater; and

(8) the 10th annual performance survey and each annual performance survey conducted thereafter is equal to or less than—

(A) 20 percent of the manufacturer's baseline level; or

(B) the de minimis level;

whichever is greater.

(b) STANDARDS FOR NEW MANUFACTURERS.—Any manufacturer of a tobacco product which begins to manufacture a tobacco product after the date of the enactment of this title shall ensure that the number of children determined to have used the manufacturer's tobacco products in each annual performance survey conducted after the manufacturer begins to manufacture tobacco products is equal to or less than the de minimis level.

(c) DE MINIMIS LEVEL.—The de minimis level shall be 0.5 percent of the total number of children determined to have used tobacco products in the first annual performance survey.

SEC. 204. NONCOMPLIANCE.

(a) VIOLATION OF STANDARD.—If, with respect to a year, a manufacturer of a tobacco product fails to comply with the required reduction under section 203(a), the manufacturer shall pay to the Secretary a noncompliance fee for each unit of tobacco products manufactured by the manufacturer which is distributed for consumer use in the year following the year in which the noncompliance occurs, in the amount specified in subsection (b).

(b) NONCOMPLIANCE FEE PER UNIT.—

(1) IN GENERAL.—With respect to a year, a manufacturer of a tobacco product shall be required to pay a noncompliance fee for each unit of tobacco products manufactured by the manufacturer if the noncompliance factor of the manufacturer (as determined under paragraph (3)) for the year is greater than zero.

(2) AMOUNT OF FEE.—The amount of the noncompliance fee that is required to be paid by a manufacturer under this section for each unit of tobacco products manufactured by the manufacturer for the year involved shall be equal to—

(A) 2 cents multiplied by so much of the noncompliance factor as does not exceed 5;

(B) 3 cents multiplied by so much of the noncompliance factor as exceeds 5 but does not exceed 10;

(C) 4 cents multiplied by so much of the noncompliance factor as exceeds 10 but does not exceed 15;

(D) 5 cents multiplied by so much of the noncompliance factor as exceeds 15 but does not exceed 20; and

(E) 6 cents multiplied by so much of the noncompliance factor as exceeds 20 but does not exceed 25.

(3) NONCOMPLIANCE FACTOR.—The noncompliance factor of a manufacturer shall be equal to 100 multiplied by the noncompliance percentage of the manufacturer (as determined under paragraph (4)).

(4) NONCOMPLIANCE PERCENTAGE.—The noncompliance percentage (if any) of a manufacturer shall be equal to 1 less the ratio of—

(A) the actual reduction that is achieved by the manufacturer in the number of children who use the manufacturer's tobacco products in the year involved; and

(B) the reduction required under section 203(a) in the number of children who use the manufacturer's tobacco products for the year.

(c) NONCOMPLIANCE FEES FOR CONSECUTIVE VIOLATIONS.—If a manufacturer of a tobacco product fails to comply with the required reduction under section 203(a) in 2 or more consecutive years, the noncompliance fee that is required to be paid by the manufacturer under this section for each unit of tobacco products manufactured by such manufacturer 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 the number of consecutive years in which the manufacturer has failed to comply with such required reductions.

(d) PROHIBITION ON SINGLE-PACK SALES IN CASES OF REPEATED NONCOMPLIANCE.—Not later than 1 year after the date of enactment of this title, 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 203(a). Such regulations shall require that, if a manufacturer fails to comply with such reductions in 3 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).

(e) REQUIRED GENERIC PACKAGING IN SEVERE CASES OF REPEATED NONCOMPLIANCE.—Not later than 1 year after the date of enactment of this title, 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 203(a). 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 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.

(f) PAYMENT.—The noncompliance fee 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.

SEC. 205. USE OF AMOUNTS.

Amounts received under section 204 shall be used as the Secretary determines appropriate to further the purposes of this Act.

SEC. 206. MISCELLANEOUS PROVISIONS.

(a) JUDICIAL REVIEW.—A manufacturer of tobacco products may seek judicial review of any action under this subtitle only after a noncompliance fee has been assessed and paid by the manufacturer 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 lesser noncompliance fee if the results of the performance survey were not arbitrary and capricious.

(b) PASS-THROUGH.—Nothing in this subtitle shall be construed as prohibiting a manufacturer from passing the costs of the amount of any noncompliance fee assessed under this subtitle on to consumers of tobacco products as a further economic deterrent to the use of such products.

(c) 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 non-compliance fees to be applied under this section.

(d) CHILD.—As used in this subtitle, the term 'child' means, except as provided in section 202(b), an individual who is under the age of 18.

(e) TREATMENT OF SURCHARGE PAYMENTS.—The payment of assessments under this subtitle shall be considered the payment of a fine or similar penalty to the Federal government for the violation of a law and shall not be considered to be an ordinary and necessary expense in carrying on a trade or business.

withdrawn

AMENDMENT NO. ____ Calendar No. ____

Purpose: To transfer certain settlement proceeds to the Black Lung Disability Trust Fund, and for other purposes.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1415

To facilitate implementation of the settlement reached between the Attorneys General of the several States and manufacturers of tobacco products, and for other purposes.

Referred to the Committee on __________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BURNS

Viz:

At the end of title IV add the following:

SEC. 411. TRANSFER OF CERTAIN SETTLEMENT PROCEEDS TO BLACK LUNG DISABILITY TRUST FUND.

(a) IN GENERAL.—Section 9501(b) of the Internal Revenue Code of 1986 (relating to relating to transfer of certain taxes; other receipts) is amended by adding at the end the following:

"(3) TRANSFERS FROM NATIONAL TOBACCO SETTLEMENT TRUST FUND.—There are hereby transferred to the Black Lung Disability Trust

Fund such sums as are necessary from the National Tobacco Settlement Trust Fund equal to the excess of—

"(A) the expenditures from the Black Lung Disability Trust Fund, over

"(B) the amounts appropriated or credited to such Trust Fund under paragraphs (1) and (2).".

(b) ELIMINATION OF EXCISE TAX ON COAL TRANSFERRED TO BLACK LUNG DISABILITY TRUST FUND.—

(1) TERMINATION OF TAX.—Subsection (e) of section 4121 of the Internal Revenue Code of 1986 (relating to imposition of tax) is amended to read as follows:

"(e) TERMINATION.—The tax imposed by this section shall apply during periods before the date which is 30 days after the date of the enactment of the Tobacco Products Control Act of 1998.".

(2) ELIMINATION OF TRANSFER.—Section 9501(b)(1) of such Code (relating to transfer to Black Lung Disability Trust Fund of amounts equivalent to certain taxes) is amended by striking "section 4121 or".

(c) TERMINATION OF NEW REPAYABLE ADVANCES.—Section 9501(c) of the Internal Revenue Code of 1986 (relating to repayable advances) is amended by adding at the end the following:

"(4) TERMINATION.—The authorization with respect to repayable advances described in paragraph (1) shall not apply after the date which is 30 days after the date of the enactment of the Tobacco Products Control Act of 1998.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date which is 30 days after the date of the enactment of the Tobacco Products Control Act of 1998.

Approve voice vote

Snowe

SEC.1181.SENSE OF THE SENATE

It is the Sense of the Senate that the proceeds of this Act may be used for purposes including, but not limited to -

(1) reimbursing public health care financing programs for tobacco-related costs, including Medicare;

(2) supporting tobacco use prevention and cessation, particularly with respect to youth, including counter-advertising at the Federal, State, Tribal, and local level;

(3) supporting tobacco-related health research activities;

(4) assisting tobacco farmers and tobacco dependent communities;

(5) creating and fully and adequately funding a Tobacco Asbestos Trust to assist victims of the unique harm that smoking causes to asbestos workers;

(6) settling with and reimbursing States for tobacco-related health care costs and damages, including Medicaid; and,

(7) providing funding for the federal Black Lung Program.

(8) Child care development

Where's Kerry's child care?

Vets
Clinical trials
Child medicaid eligibility

~~Withdrawn~~
Laid aside

Amendment No._____ **Calendar No._____**

Amendment to Committee Amendment to S. 1415

Purpose: To ensure that funds distributed to states by this Act are expended in accordance with state law and processes.

In the Committee on Commerce, Science, and Transportation

Amendment to be proposed by Mrs. Hutchison

Viz:

On page _____, line _____, insert the following:

In the event any funds from this Act are received by a state under this Act, such funds shall be subject to appropriations as determined by state law.

Defeated via vote

F6654 I80 FILENAME
I81DISCUSSION DRAFT_
I81~~CONFIDENTIAL~~ DRAFT_
I82S.L.C.
I38AMENDMENT NO. G7 T2XX G1 T1
I36Calendar No. G7 T2XX G1 T1
I39Purpose: To provide uniform standards for the awarding of compensatory and punitive damages in a civil action against a volunteer or volunteer service organization, and for other purposes.
I45IN THE SENATE OF THE UNITED STATES_105th Cong., 2d Sess.
I43S. 1415
I43S. RES. _
I43S. CON. RES. _
I43S. J. RES. _
I77 TITLE To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.
S6652 I46 T1(no.) K G7 T2XXXX G1 T1
I87(title) L I87 L I87 L I87 L I87
S6654 I46 DATELINE
I77Referred to the Committee on G7 T2XXXXXXXXXXXXX G1 T1 and ordered to be printed
I77Ordered to lie on the table and to be printed
I55 T4*Amendment s In the Nature of a Substitute* Kintended to be proposed by
SPONSOR Mr. T4*Ashcroft* K to the amendment (No. G7 T2XX K) proposed by
G7 T2XXXXXXXXX G1 T1 _to the Committee amendment_
I55Viz:
S6201 I20 At the appropriate place, insert the following:
I72SEC. G7 T2XX K T2. LIABILITY REFORM FOR VOLUNTEER SERVICE ORGANIZATIONS.
I20 (a) T4*Findings and Purposes* K._
I22 (1) T4*Findings* K._Congress finds that_
I24 (A) the increasingly litigious nature of the legal profession in the United States has created an unnecessary and ultimately harmful barrier between the traditional desire of individuals to help other individuals and their ability to act on those desires;
I24 (B) the cost of lawsuits, excessive, unpredictable, and often arbitrary damage awards, and unfair allocations of liability have a direct and chilling effect on the spirit of volunteerism and the provision of charitable service in the United States;
I24 (C) arbitrary and capricious damage awards against charitable institutions have contributed considerably to the high cost of liability insurance, making it difficult and often impossible for volunteer service organizations to be protected from liability as many volunteer service organizations serve the public without regard to receiving any personal or institutional economic benefits from that service;
I24 (D) as a result, volunteer service organizations throughout the United States have been adversely affected and often debilitated;
I24 (E) without a resurgence in volunteerism, the essential services that volunteer service organizations provide, including crisis counseling, volunteer rescue services, coaches and referees for sports activities of children, and support for the elderly, will continue to diminish;
I24 (F) clarifying and limiting the personal liability risks assumed by individuals and institutions who volunteer to help others without benefit to themselves is an appropriate subject for Federal legislation because_
I26 (i) of the national scope of the problems created by the legitimate fears about frivolous, arbitrary, or capricious lawsuits;

I26 (ii) the citizens of the United States depend on, and the Federal Government expends funds on, numerous social programs that depend on the services of volunteers service organizations; and
I26 (iii) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations; and
S6201 I24 (G) liability reform for volunteer service organizations will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights and that liability reform is thus an appropriate use of the powers contained in article I, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.
I22 (2) T4*Purposes* K._The purposes of this section are to provide protection from personal financial liability for volunteer service organizations that provide volunteer services that are conducted in good faith_
I24 (A) to promote the interests of social service program beneficiaries and taxpayers;
I24 (B) to sustain the availability of programs, volunteer service organizations, and governmental entities that depend on volunteer contributions and services; and
I24 (C) to provide the protection by_
I26 (i) placing reasonable limits on punitive damages;
I26 (ii) ensuring the fair allocation of liability in certain civil actions; and
I26 (iii) establishing greater fairness, rationality, and predictability in the civil justice system of the United States.
I20 (b) T4*Definitions* K._In this section:
I22 (1) T4*Claimant* K._
I24 (A) T4*In general* K._The term ``claimant'' means any person who asserts a claim for damages in an action covered by this section and any person on whose behalf such a claim is asserted.
I24 (B) T4*Claimants for certain claims* K._If a claim described in subparagraph (A) is asserted through or on behalf of_
I26 (i) an estate, the term includes the claimant's decedent; or
I26 (ii) a minor or incompetent, the term includes the claimant's legal guardian.
I22 (2) T4*Clear and convincing evidence* K._
I24 (A) T4*In general* K._The term ``clear and convincing evidence'' is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.
I24 (B) T4*Degree of proof* K._The degree of proof required to satisfy the standard of clear and convincing evidence shall be_
I26 (i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and
I26 (ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.
I22 (3) T4*Compensatory damages* K._The term ``compensatory damages'' means damages awarded for economic and noneconomic loss.
I22 (4) T4*Economic loss* K._The term ``economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.
I22 (5) T4*Harm* K._The term ``harm'' means_
I24 (A) any physical injury, illness, disease, or death;
I24 (B) damage to property; or
I24 (C) economic loss, including any direct or consequential economic loss.
I22 (6) T4*Health care provider* K._The term ``health care provider'' means any

person, organization, or institution that_
I24 (A) is engaged in the delivery of health care services in a State; and I24 (B) is required by the applicable laws (including regulations) of a State to be licensed, registered, or certified by the State to engage in the delivery of health care services in the State.
I22 (7) T4*Noneconomic loss* K._The term ``noneconomic loss" means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.
I22 (8) T4*Person* K._The term ``person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).
I22 (9) T4*Punitive damages* K._The term ``punitive damages" means damages awarded against any person to punish or deter that person or any other person, from engaging in similar behavior in the future.
I22 (10) T4*State* K._The term ``State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the foregoing.
I22 (11) T4*Volunteer service organization* K._The term ``volunteer service organization" means a not-for-profit organization (other than a health care provider) that is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.
I22 (12) T4*Volunteer services* K._The term ``volunteer services" means services provided, in good faith, without compensation or other pecuniary benefit (other than reimbursement of expenses incurred in providing such services) inuring to the benefit of the service provider or any other person (other than the recipient of the volunteer service), and within the scope of the official functions and duties of the service provider with a volunteer service organization or governmental entity.
I20 (c) T4*Applicability* K._
I22 (1) T4*In general* K._
I24 (A) T4*Covered claims* K._Subject to subparagraph (B), this section governs any claim for damages in any civil action brought in any State or Federal court against a volunteer service organization in any case in which the claim relates to_
I26 (i) volunteer services performed by an individual acting on the part of a volunteer service organization; or
I26 (ii) activities or services performed by a volunteer service organization.
I24 (B) T4*Actions excluded* K._The limitations on damages contained in this section shall not apply in any action described in clause (i) or (ii) of subparagraph (A) in any case in which_
I26 (i) the misconduct for which damages are awarded _
I28 (I) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or an act of international terrorism (as that term is defined in section 2331(1) of title 18, United States Code) for which the defendant has been convicted in any court;
I28 (II) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note)) for which the defendant has been convicted in any court;
I28 (III) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court; or
I28 (IV) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law for which the defendant has been convicted in any court; or
I26 (ii) an individual acting on the part of the volunteer service organization was found to be under the influence (as determined pursuant to applicable State law) of

intoxicating alcohol or any drug, at the time of the misconduct for which damages are awarded and such influence was a proximate cause of the harm that is the subject of the action.
I22 (2) T4*Relationship to state law* K._This section supersedes State law only to the extent that State law applies to an issue covered by this section. Any issue (including any standard of liability) that is not governed by this section shall be governed by otherwise applicable State or Federal law.
I22 (3) T4*Effect on other law* K._Nothing in this section shall be construed to_
I24 (A) waive or affect any defense of sovereign immunity asserted by any State under any law;
I24 (B) supersede or alter any other Federal law;
I24 (C) waive or affect any defense of sovereign immunity asserted by the United States;
I24 (D) affect the applicability of any provision of chapter 97 of title 28, United States Code;
I24 (E) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;
I24 (F) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or
I24 (G) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8)).
I20 (d) T4*Uniform Standard for Award of Punitive Damages* K._Punitive damages may, to the extent permitted by applicable State or Federal law, be awarded against a defendant if the claimant establishes by clear and convincing evidence that conduct carried out by the defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action in any civil action for a claim described in clause (i) or (ii) of subsection (c)(1)(A).
I20 (e) T4*Limitation on the Amount of Punitive Damages* K._The amount of punitive damages that may be awarded in an action described in subsection (d) shall not exceed the lesser of_
I22 (1) twice the sum of the amounts awarded to the claimant for economic loss and noneconomic loss; or
I22 (2) $250,000.
I20 (f) T4*Preemption* K._
I22 (1) T4*In general* K._This section does not_
I24 (A) create a cause of action for punitive or compensatory damages; or
I24 (B) preempt or supersede any State or Federal law to the extent that such law further limits the amount of an award of punitive or compensatory damages.
I22 (2) T4*Remittitur* K._Nothing in this subsection shall modify or reduce the ability of courts to grant a remittitur.
I20 (g) T4*Application by Court* K._The application of the limitation imposed by subsection (f) may not be disclosed to a jury by a court. Nothing in this subsection authorizes the court to enter an award of punitive damages in excess of the initial award of punitive damages awarded by a jury.
I20 (h) T4*Bifurcation at Request of any Party* K._
I22 (1) T4*In general* K._At the request of any party the trier of fact, in any action for punitive damages that is subject to this section, shall consider in a separate proceeding, held subsequent to the determination of the amount of compensatory damages, whether punitive damages are to be awarded for the harm that is the subject

of the action and the amount of the award.
I22 (2) T4***Inadmissibility of evidence relevant only to a claim of punitive damages in a proceeding concerning compensatory damages***K._If any party requests a separate proceeding under paragraph (1), in a proceeding to determine whether the claimant may be awarded compensatory damages, any evidence, argument, or contention that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.
I20 (i) T4***Liability for Compensatory Damages***K._
I22 (1) T4***General rule***K._In any action described in clause (i) or (ii) of subsection (c)(1)(A) brought against more than one defendant, the liability of each defendant for compensatory damages shall be determined in accordance with this subsection.
I22 (2) T4***Amount of liability for compensatory damages***K._
I24 (A) T4***In general***K._Each defendant shall be liable only for the amount of compensatory damages allocated by the trier of fact to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with subparagraph (B)) for the harm to the claimant with respect to which the defendant is found to be liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.
I24 (B) T4***Percentage of responsibility***K._For purposes of determining the amount of compensatory damages allocated to a defendant under this subsection, the trier of fact in an action described in paragraph (1) shall determine the percentage of responsibility of each person responsible for the harm to the claimant, without regard to whether that person is party to the action.

Defeated [illegible]
recorded vote 13-3

F7781 I05 FOR: Ashcroft/Ashcroft/Lori Sharpe (4-1424)
Q20 I05 SUB: Commerce/Misc
Q20 I05 TYP: Amendment - Senate Measure (S1415)
Q20 I05 DES: To provide legal standards and procedures for suppliers of raw materials and component parts for medical devices.
Q20 I05 REC: March 30, 1998
I05 DLV: March 31, 1998
F6654 I80 FILENAME
I81DISCUSSION DRAFT_
I81~~CONFIDENTIAL~~ DRAFT_
I82S.L.C.
I38AMENDMENT NO. G7 T2XX G1 T1
I36Calendar No. G7 T2XX G1 T1
I39Purpose: To provide legal standards and procedures for suppliers of raw materials and component parts for medical devices.
I45IN THE SENATE OF THE UNITED STATES_105th Cong., 2d Sess.
I43S. 1415
I43S. RES. _
I43S. CON. RES. _
I43S. J. RES. _
I77 TITLE_To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.
S6652 I46 T1(no.) **K G7 T2XXXX G1 T1**
I87(title) L I87 L I87 L I87 L I87
S6654 I46 DATELINE
I77Referred to the Committee on **G7 T2XXXXXXXXXXXX G1 T1** and ordered to be printed
I77Ordered to lie on the table and to be printed
I55 T4Amendment s In the Nature of a Substitute Kintended to be proposed by
SPONSOR Mr. **T4Ashcroft K** to the amendment (No. **G7 T2XX K**) proposed by
G7 T2XXXXXXXXX G1 T1 _to the Committee amendment_
I55Viz:At the appropriate place, insert the following:
S6201 I78TITLE G7 T2XX **K** BIOMATERIALS ACCESS
I72SEC. G7 T2XX K01. SHORT TITLE.
I20 This title may be cited as the ``Biomaterials Access Assurance Act of 1998".

I72SEC. G7 T2XX K02. FINDINGS.
I20 Congress finds that_
I22 (1) each year millions of citizens of the United States depend on the availability of lifesaving or life enhancing medical devices, many of which are permanently implantable within the human body;
I22 (2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;
I22 (3) most of the medical devices are made with raw materials and component parts that_
I24 (A) are not designed or manufactured specifically for use in medical devices;
I24 (B) come in contact with internal human tissue; and
(C) move in interstate commerce.
I22 (4) the raw materials and component parts also are used in a variety of nonmedical products;

I22 (5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: NL DATE: 10/26/15

an extremely small portion of the overall market for the raw materials and medical devices;
I22 (6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;
I22 (7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate_
I24 (A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or
I24 (B) warnings related to the use of such medical devices;
I22 (8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

S6201
I22 (9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;
I22 (10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

I22 (11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

I22 (12) attempts to develop such new suppliers would raise the cost of medical devices;
I22 (13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty_
I24 (A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and
I24 (B) to warn consumers concerning the safety and effectiveness of a medical device;
I22 (14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the
suppliers to cease supplying manufacturers of medical devices; and
I22 (15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed_
I24 (A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and
I24 (B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.
I72SEC. G7 T2XX K03. DEFINITIONS.

I20 As used in this title:

I22 (1) **T4Biomaterials supplier** K._
I24 (A) **T4In general** K._The term ``biomaterials supplier'' means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.
I24 (B) **T4Persons included** K._Such term includes any person who_
I26 (i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

I26 (ii) licenses a biomaterials supplier to produce component parts or raw materials.
I22 (2) **T4Claimant** K._
I24 (A) **T4In general** K._The term ``claimant'' means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.
I24 (B) **T4Action brought on behalf of an estate** K._With respect to an action brought on behalf of or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.
I24 (C) **T4Action brought on behalf of a minor or incompetent** K._With respect to an action brought on behalf of or through a minor or incompetent, such term includes the parent or guardian of the minor or incompetent.
I24 (D) **T4Exclusions** K._Such term does not include_

I26 (i) a provider of professional health care services, in any case in which_
I28 (I) the sale or use of an implant is incidental to the transaction; and
I28 (II) the essence of the transaction is the furnishing of judgment, skill, or services;
I26 (ii) a person acting in the capacity of a manufacturer, seller, or biomaterials supplier; or
I26 (iii) a person alleging harm caused by either the silicone gel or the silicone envelope utilized in a breast implant containing silicone gel, except that_

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I28 (I) neither the exclusion provided by this clause nor any other provision of this title may be construed as a finding that silicone gel (or any other form of silicone) may or may not cause harm; and
I28 (II) the existence of the exclusion under this clause may not_
I30 (aa) be disclosed to a jury in any civil action or other proceeding; and
I30 (bb) except as necessary to establish the applicability of this title, otherwise be presented in any civil action or other proceeding.
I22 (3) **T4Component part** K._
I24 (A) **T4In general** K._The term ``component part'' means a manufactured piece of an implant.
I24 (B) **T4Certain components** K._Such term includes a manufactured piece of an implant that_
I26 (i) has significant non-implant applications; and
I26 (ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.
I22 (4) **T4Harm** K._
I24 (A) **T4In general** K._The term ``harm'' means_
I26 (i) any injury to or damage suffered by an individual;

I26 (ii) any illness, disease, or death of that individual resulting from that injury or damage; and

I26 (iii) any loss to that individual or any other individual resulting from that injury or damage.
I24 (B) T4Exclusion K._The term does not include any commercial loss or loss of or damage to an implant.
I22 (5) T4Implant K._The term ``implant'' means_
I24 (A) a medical device that is intended by the manufacturer of the device_
I26 (i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or
I26 (ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and
I24 (B) suture materials used in implant procedures.

I22 (6) T4Manufacturer K._The term ``manufacturer'' means any person who, with respect to an implant_
I24 (A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and
I24 (B) is required_
I26 (i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and
I26 (ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

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I22 (7) T4Medical device K._The term ``medical device'' means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) and includes any device component of any combination product as that term is used in section 503(g) of such Act (21 U.S.C. 353(g)).

I22 (8) T4Raw material K._The term ``raw material'' means a substance or product that_
I24 (A) has a generic use; and
I24 (B) may be used in an application other than an implant.
I22 (9) T4Secretary K._The term ``Secretary'' means the Secretary of Health and Human Services.
I22 (10) T4Seller K._
I24 (A) T4In general K._The term ``seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.
I24 (B) T4Exclusions K._The term does not include_
I26 (i) a seller or lessor of real property;

I26 (ii) a provider of professional services, in any case in which the sale or use of an

implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or
I26 (iii) any person who acts in only a financial capacity with respect to the sale of an implant.

I72SEC. G7 T2XX K04. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

I20 (a) T4**General Requirements** K._
I22 (1) T4**In general** K._In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section G7 T2XX K05.
I22 (2) T4**Procedures** K._Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section G7 T2XX K06.
I20 (b) T4**Applicability** K._
I22 (1) T4**In general** K._Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.
I22 (2) T4**Exclusion** K._A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser_

I24 (A) shall not be considered an action that is subject to this title; and
I24 (B) shall be governed by applicable commercial or contract law.
I20 (c) T4**Scope of Preemption** K._

I22 (1) T4**In general** K._This title supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

I22 (2) T4**Applicability of other laws** K._Any issue that arises under this title and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.
I20 (d) T4**Statutory Construction** K._Nothing in this title may be construed_
I22 (1) to affect any defense available to a defendant under any other provisions of Federal or State

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I70law in an action alleging harm caused by an implant; or
I22 (2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.
I72SEC. G7 T2XX K05. LIABILITY OF BIOMATERIALS SUPPLIERS.
I20 (a) T4**In General** K._

I22 (1) T4**Exclusion from liability** K. Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.
I22 (2) T4**Liability** K. A biomaterials supplier that_
I24 (A) is a manufacturer may be liable for harm to a claimant described in subsection (b);
I24 (B) is a seller may be liable for harm to a claimant described in subsection (c); and

I24 (C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

I20 (b) T4**Liability as Manufacturer** K._
I22 (1) T4**In general** K. A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.
I22 (2) T4**Grounds for liability** K. The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier_
I24 (A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and
I24 (ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section;
I24 (B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to_
I26 (i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or
I26 (ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or
I24 (C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section G7 T2XX K06(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section G7 T2XX K06, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.
I22 (3) T4**Administrative procedures** K._
I24 (A) T4**In general** K. The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing_
I26 (i) notice to the affected persons; and
I26 (ii) an opportunity for an informal hearing.

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I24 (B) T4**Docketing and final decision** K. Immediately upon receipt of a petition filed

pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.
I24 (C) T4**Applicability of statute of limitations**K. Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.
I20 (c) T4**Liability as Seller**K. A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if_
I22 (1) the biomaterials supplier_
I24 (A) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after_
I26 (i) the manufacture of the implant; and
I26 (ii) the entrance of the implant in the stream of commerce; and
I24(B) subsequently resold the implant; or
I22 (2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section G7 T2XX K06(c)(3)(B)(ii) finds, on the basis of affidavits submitted in accordance with section G7 T2XX K06, that it is necessary to impose liability on the biomaterials supplier as a seller because the related seller meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.
I20 (d) T4**Liability for Violating Contractual Requirements or Specifications**K. A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that_
I22 (1) the raw materials or component parts delivered by the biomaterials supplier either_
I24 (A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or
I24 (B) failed to meet any specifications that were_
I26 (i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;
I26 (ii)(I) published by the biomaterials supplier;
I26 (II) provided to the manufacturer by the biomaterials supplier; or
I26 (III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or
I26 (iii) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j), and received clearance from the Secretary if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

I22 (2) such conduct was an actual and proximate cause of the harm to the claimant.

I72SEC. G7 T2XX K06. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

I20 (a) T4Motion To Dismiss K._In any action that is subject to this title, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action against it on the grounds that_
I22 (1) the defendant is a biomaterials supplier; and
I22 (2)(A) the defendant should not, for the purposes of_
I24 (i) section G7 T2XX K05(b), be considered to be a manufacturer of the implant that is subject to such section; or
I24 (ii) section G7 T2XX K05(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

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I22 (B)(i) the claimant has failed to establish, pursuant to section G7 T2XX K05(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or
I22 (ii) the claimant has failed to comply with the procedural requirements of subsection (b).
I20 (b) T4**Manufacturer of Implant Shall Be Named a Party** K._The claimant shall be required to name the manufacturer of the implant as a party to the action, unless_
I22 (1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or
I22 (2) an action against the manufacturer is barred by applicable law.
I20 (c) T4**Proceeding on Motion To Dismiss** K._The following rules shall apply to any proceeding on a motion to dismiss filed under this section:
I22 (1) T4**Affidavits relating to listing and declarations** K._
I24 (A) T4**In general** K._The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).
I24 (B) T4**Response to motion to dismiss** K._In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that_
I26 (i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section G7 T2XX K05(b)(2)(B); or
I26 (ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section G7 T2XX K05(c).
I22 (2) T4**Effect of motion to dismiss on discovery** K._

I24 (A) T4**In general** K._If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.
I24 (B) T4**Discovery** K._If a defendant files a motion to dismiss under subsection

(a)(2)(B)(i) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to_

I26 (i) the pending motion to dismiss; or

I26 (ii) the jurisdiction of the court.

I22 (3) T4**Affidavits relating status of defendant**K._

I24 (A) T4**In general**K._Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

I24 (B) T4**Responses to motion to dismiss**K._The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section G7 T2XX K05 on the grounds that the defendant is not a manufacturer subject to such section G7 T2XX K05(b) or seller subject to section G7 T2XX K0d5(c), unless the claimant submits a valid affidavit that demonstrates that_

I26 (i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section G7 T2XX K05(b); or

I26 (ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section G7 T2XX K05(c).

I22 (4) T4**Basis of ruling on motion to dismiss**K._

I24 (A) T4**In general**K._The court shall rule on a motion to dismiss filed under subsection (a)

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I70solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

I24 (B) T4**Motion for summary judgment**K._Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

I20 (d) T4**Summary Judgment**K._

I22 (1) T4**In general**K._

I24 (A) T4**Basis for entry of judgment**K._A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section G7 T2XX K05(d).

I24 (B) T4**Issues of material fact**K._With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for

the claimant if the jury found the evidence to be credible.
I22 (2) **T4Discovery made prior to a ruling on a motion for summary judgment** K._If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists as to the applicable elements set forth in paragraphs (1) and (2) of section G7 T2XX K05(d).
I22 (3) **T4Discovery with respect to a biomaterials supplier** K._A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section G7 T2XX K05(d) or the failure to establish the applicable elements of section G7 T2XX K05(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.
I20 (e) **T4Stay Pending Petition for Declaration** K._If a claimant has filed a petition for a declaration pursuant to section G7 T2XX K05(b)(3)(A) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.
I20 (f) **T4Manufacturer Conduct of Proceeding** K._The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer **and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.**
I20 (g) **T4Attorney Fees** K._The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if_
I22 (1) the claimant named or joined the biomaterials supplier; and
I22 (2) the court found the claim against the biomaterials supplier to be without merit and frivolous.
I72SEC. G7 T2XX K07. APPLICABILITY.
I20 This title shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this Act, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this Act.

AMENDMENT NO.______

Ex. ____ Calendar No. __

Purpose: <u>To strike provisions providing liability caps for tobacco companies</u>.

IN THE SENATE OF THE UNITED STATES- <u>105th</u> Cong., <u>2nd</u> Sess.

S. 1415

Referred to the Committee on ___________
___________ and ordered to be printed
( ) Ordered to lie on the table and to be printed

INTENDED To be proposed by <u>Mr. Ashcroft</u>

Viz:

At the appropriate place:

Strike the provisions providing annual liability caps.

Y

Ashcroft
Brownback

N

Voice vote
agreed

AMENDMENT NO. ____ Calendar No. ____

Purpose: To provide funds for certain child care programs.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1415

To facilitate implementation of the settlement reached between the Attorneys General of the several States and manufacturers of tobacco products, and for other purposes.

Referred to the Committee on ______________
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KERRY

Viz:

In title IV—

(1) after the title heading insert the following:

"Subtitle A—General Payment Provisions"; and

(2) add the following at the end thereof:

#7

AMENDMENT NO. ____ Calendar No. ____

April 1, 1998

COMMITTEE AMENDMENT

Purpose: To strike cap on liability limitations.

IN THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION—105th Cong., 1st Sess.

S. 1415

AMENDMENT intended to be proposed by Mr. DORGAN (for himself and Mr. Rockefeller)

Viz:

Strike Subsection 706(c) of Title VII.

Y N

Accepted

Ford Amendment #19: To ensure equitable treatment for small tobacco companies.

(1) On page 157, STRIKE 402(a)(1)(E) and INSERT the following:

(E) United States Tobacco Company -- 3.2 percent.

(2) On page 159, STRIKE 402(e) and INSERT the following:

(e) APPORTIONMENT OF ANNUAL PAYMENT. --

(1) Each participating tobacco manufacturer shall be liable for its share of the applicable base amount payment due each year under subsection (b) of this section according to paragraph (2) of this subsection. Any separate collection of these payments amongst such participating manufacturers shall be set forth in accordance with an Appendix to the Protocol, hereto. The Administrator of the Fund shall calculate the estimated payments due from each participating manufacturer according to the provisions of paragraph (2) of this subsection. Each participating manufacturer shall pay one-third of its share of the annual payment on March 1, June 1, and September 1 of each year. One month before each payment is due, the Administrator shall make a final determination of each such manufacturer's applicable base amount payment obligation in accordance with paragraph (2) of this subsection. The annual payments shall be the obligation and responsibility only of the participating manufacturers and their affiliated entities (if any) that directly sell tobacco products in the domestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

(2) Calculation of Payment. -- The share of the annual payment apportioned to each manufacturer of a tobacco product shall be equal to that manufacturer's share of adjusted units as

determined by subparagraphs (i) and (ii).

(i) Each manufacturer's number of units shall be determined by counting each

(a) pack of twenty cigarettes as one adjusted unit;

(b) 1.2 ounces of moist snuff as 0.4 adjusted unit;

(c) 3 ounces of other smokeless tobacco product as 0.24 adjusted units.

(ii) Each manufacturer's number of adjusted units shall be determined by

(a) for the first 150 million units as determined under subparagraph (i), treating each unit as equal to 25% of an adjusted unit;

(b) for the next 150 million units as determined under subparagraph (i), treating each unit as equal to 50% of an adjusted unit;

(c) for all units in excess of 300 million units as determined under subparagraph (i), treating each unit as equal to 100% of an adjusted unit; and

(d) in the case of a manufacturer with more than 500 million units as determined under subparagraph (i), treating all units as equal to 100% of an adjusted unit.

Subtitle B—General Spending Provisions

SEC. 411. IMPROVING CHILD CARE AND EARLY CHILDHOOD DEVELOPMENT.

(a) IN GENERAL.—The Trustees of the Trust Fund shall transfer funds for each fiscal year to be used by the Secretary for the following purposes:

(1) Improving the affordability of child care through increased appropriations for child care under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

(2) Enhancing the quality of child care and early childhood development through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

(3) Expanding the availability and quality of school-age care through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

(4) Assisting young children by providing grants to local collaboratives under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) for the purpose of improving parent education and supportive services, strength-

ening the quality of child care, improving health services, and improving services for children with disabilities.

(b) SUPPLEMENT NOT SUPPLANT.—Amounts made available to a State under this section shall be used to supplement and not supplant other Federal, State and local funds provided for programs that serve the health and developmental needs of children. Amounts provided to the State under any of the provisions of law referred to in this section shall not be reduced solely as a result of the availability of funds under this section.

Kerry - Defeated

AMENDMENT NO. ____ Calendar No. ____

Purpose: To increase the industry payments to ensure that the payments are based on an average national retail price of a pack of cigarettes of $1.50.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1415

To facilitate implementation of the settlement reached between the Attorneys General of the several States and manufacturers of tobacco products, and for other purposes.

Referred to the Committee on ______________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KERRY

Viz:

Section 402(b) of the bill is amended—

(1) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively and indenting such subparagraphs appropriately;

(2) by striking "Beginning" and inserting the following:

"(1) IN GENERAL.—Beginning"; and

(3) by adding at the end the following:

"(2) PAYMENT ADJUSTMENT.—Beginning with the date on which the base amount described in paragraph (1)(E) is to become effective, and on a date within 1 month of that date, as determined by the Secretary of the Treasury, and each year thereafter, the base amount described in paragraph (1)(E) shall be increased by the amount, if any, that the Secretary of the Treasury determines on the basis of 1 or more price surveys conducted by the Secretary over the preceding 12 months, is necessary to ensure that the national average retail price of a pack of cigarettes in the succeeding 1-year period will be $1.50 higher than the national average retail price of a pack of cigarettes in the year of enactment of this Act (such increase shall not take into account Federal, State, and local taxes levied on a pack of cigarettes that exist on the date of enactment of this Act, nor increases in those taxes scheduled before the date of enactment of this Act to take effect subsequent to enactment) with equivalent price increases to be made on other tobacco products.".

AMENDMENT NO. ____ Calendar No. ____

Purpose: To strike provisions that permit States to opt out of the requirements relating to involuntary exposure to environmental tobacco smoke.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1415

To facilitate implementation of the settlement reached between the Attorneys General of the several States and manufacturers of tobacco products, and for other purposes.

Referred to the Committee on ______________
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. WYDEN

Viz:

Strike sections 506 and 507, and insert the following:

SEC. 506. EFFECTIVE DATE.

The provisions of this title shall take effect on the date that is 180 days after the date of enactment of this Act.

Passed by voice vote

Commerce Committee amendment to S. 1415 intended to be proposed by Senator Rockefeller

April 1, 1998

SEC. . RECOVERY BY SECRETARY OF VETERANS AFFAIRS.

Title 38, United States Code, is amended by adding after part VI the following new part:

"PART VII—RECOVERY OF COMPENSATION COSTS FOR TOBACCO-RELATED DISABILITY OR DEATH.

"CHAPTER 91—TORT LIABILITY FOR DISABILITY OR DEATH DUE TO TOBACCO USE

"Sec.

"9101. Recovery by Secretary of Veterans Affairs.

"9102. Regulations.

"9103. Limitation or repeal of other provisions for recovery of compensation.

"9104. Exemption from annual limitation on damages.

"§ 9101. Recovery by Secretary of Veterans Affairs

"(a) Conditions; exceptions; persons liable; amount of recovery; subrogation

"In any case in which the Secretary is authorized or required by law to provide compensation under this title for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veteran's active military, naval, or air service under circumstances creating a tort liability upon a participating manufacturer, distributor, or retailer of a tobacco product (other than or in addition to the United States) to pay damages therefor, the Secretary shall have a right to recover (independent of the rights of the injured or diseased veteran) from said participating manufacturer, distributor, or retailer the cost of the compensation paid or to be paid and shall, as to this right, be subrogated to any right or claim that the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the cost of the compensation paid or to be paid.

"(b) Enforcement procedure; intervention; joinder of parties; State or Federal court proceedings

"The Secretary may, to enforce such right under subsection (a) of this section: (1) intervene or join in any action or proceeding brought by the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors, against the participating manufacturer, distributor, or retailer of a tobacco product who is liable for the injury or disease; or (2) if such action or proceeding is not commenced within six months after the first day on which compensation is paid by the Secretary in connection with the injury or disease involved, institute and prosecute legal proceedings against the participating manufacturer, distributor, or retailer of a tobacco product who is liable for the injury or disease, in a State or Federal court, either alone (in its own name or in the name of the injured veteran, his or her guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors.

"**(c) Credits to appropriations**

"Any amount recovered or collected under this section for compensation paid by the Secretary shall be credited to a revolving fund established in the Treasury of the United States known as the Department of Veterans Affairs Tobacco Recovery Fund (hereafter called the Fund). The Fund shall be available to the Secretary without fiscal year limitation for purposes of veterans' benefit programs, including administrative costs. The Secretary may transfer such funds as deemed necessary to the various Department of Veterans Affairs appropriations, which shall remain available until expended.

"(d) **Definition**

"For purposes of this section, the term "participating manufacturer, distributor, or retailer of a tobacco product" means a manufacturer, distributor, or retailer of tobacco products that has entered into a consent decree under section ____ of Public Law No. ___ and that is a signatory to the Protocol under section ____ of Public Law No. ___.

"§ 9102. **Regulations**

"(a) **Determination and establishment of present value of compensation to be paid**

"The Secretary may prescribe regulations to carry out this chapter, including regulations with respect to the determination and establishment of the present value of compensation to be paid to an injured or diseased veteran or his or her surviving spouse, child, or parent.

"(b) **Settlement, release and waiver of claims**

"To the extent prescribed by regulations under subsection (a) of this section, the Secretary may: (1) compromise, or settle and execute a release of, any claim which the Secretary has by virtue of the right established by section 9101 of this title; or (2) waive any such claim, in whole or in part, for the convenience of the Government, or if he or she determines that collection would result in undue hardship upon the veteran who suffered the injury or disease or his or her surviving spouse, child or parent resulting in payment of compensation.

"**(c) Damages recoverable for personal injury unaffected**

"No action taken by the Secretary in connection with the rights afforded under this chapter shall operate to deny to the injured veteran or his or her surviving spouse, child or parent the recovery for that portion of his or her damage not covered hereunder.

"**§ 9103. Limitation or repeal of other provisions for recovery of compensation**

"This chapter does not limit or repeal any other provision of law providing for recovery by the Secretary of the cost of compensation described in section 9101 of this title.

"**§ 9104. Exemption from annual limitation on damages**

"Any amount recovered under section 9101 of this title for compensation paid or to be paid by the Secretary for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veteran's active military, naval, or air service shall not be subject to the limitation on the annual amount of damages for which the participating manufacturers, distributors, and retailers may be found liable as provided in section ___ of Public Law No. ___ and shall not be counted in computing the annual amount of damages for purposes of that section.”.

Gorton Amendment

On page 179, line 15, strike all that follows through page 190, line 22, and insert the attached:

Accepted

VVote

SEC. 505. REGULATIONS.

The Administrator is authorized to promulgate such regulations as the Administrator deems necessary to carry out this title.

SEC. 506. EFFECTIVE DATE.

Except as provided in section 507, the provisions of this title shall take effect on the first day of January next following the next regularly scheduled meeting of the State legislature occurring after the date of enactment of this Act at which, under the procedural rules of that legislature, a measure under section 507 may be considered.

SEC. 507. STATE CHOICE.

This title shall not apply to any State that, by law, provides that it shall not apply to that State.

TITLE VI—APPLICATION TO INDIAN TRIBES.

SEC. 601. SHORT TITLE.

This title may be cited as the "Reduction in Tobacco Use and Regulation of Tobacco Products in Indian Country Act of 1998".

SEC. 602. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that Native Americans have used tobacco products for recreational, ceremonial, and traditional purposes for centuries.

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

(1) provide for the implementation of any national tobacco legislation with respect to the regulation of tobacco products and other tobacco-related activities on Indian lands;

(2) recognize the historic Native American traditional and ceremonial use of tobacco products, and to preserve and protect the cultural, religious, and ceremonial uses of tobacco by members of Indian tribes;

~~(3) recognize and respect Indian tribal sovereignty and tribal authority to make and enforce laws regarding the regulation of tobacco distributors and tobacco products on Indian lands; and~~

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(4) ensure that the necessary funding is made available to tribal governments for licensing and enforcement of tobacco distributors and tobacco products on Indian lands.

SEC. 603. APPLICATION OF TOBACCO-RELATED PROVISIONS TO NATIVE AMERICANS.

(a) IN GENERAL.—The provisions of ~~any~~ this Act ~~enacted in order to give effect to the national tobacco settlement agreement of June 20, 1997~~ shall apply to the manufacture, distribution, or sale of tobacco or tobacco products ~~within the exterior boundaries of Indian reservations or~~ in Indian ~~lands~~ country as defined in 18 USC. Section 1151, and on other trust lands subject to the jurisdiction of an Indian tribe. To the extent that an Indian tribe engages in the manufacture, distribution or sale of tobacco products, the