

NLWJC - Kagan
DPC - Box 048 - Folder-005

**Tobacco-Settlement: New
Legislation**

Comparison of Tobacco Proposals
May 6, 1998

	McCain	Hansen-Meehan*	Nickles**
Price Increase	\$1.10 over 5 years.	\$1.50 over 3 years.	Unknown, but probably low.
Penalties:			
1. Industry	Industry penalties are based on the extent to which industry misses youth smoking targets: \$80 million per percentage point missed between 1 and 5 points; \$160 million per point missed between 6 and 10 points; \$240 million per point missed if 11 points or more. Penalties are capped at \$3.6 billion (which are non-deductible).	None.	Unknown, but probably low or none.
2. Company Specific	None.	Company penalties are based on the extent to which company misses youth smoking targets and the number of consecutive years in which company misses targets. In 1st year, 1 cent per pack for each point missed up to 10; 2 cents per pack for each point missed between 10 and 20; 3 cents per pack for each point missed over 20. In 2nd consecutive year, 2 cents per pack up to 10, 4 cents between 10 and 20, 6 cents over 20. In third consecutive year, same monetary penalties and no single pack sales; in fourth consecutive year, same as third year plus generic packaging.	Unknown, but probably none.
Youth Smoking Reduction Targets	60% over 10 years.	80% over 10 years.	Unknown.
Full FDA Authority	Provides full authority in a separate title.	Provides full authority within existing drug-and-device title.	May adopt McCain provisions, but with changes circumscribing FDA authority in limited situations.
<p>* Based on announcement summary; no bill yet. ** Based on ideas reported in the press and on Hill; no bill yet.</p>			

	McCain	Hansen-Meehan*	Nickles**
Advertising and Access Provisions	Codifies advertising and access provisions in the FDA rule and adds additional restrictions through a consent protocol.	Codifies advertising and access provisions in the FDA rule and adds all additional restrictions in McCain.	Unknown.
Protections of Tobacco Farmers	Includes Sen. Ford's LEAF Act, which provides for compensation (buyout and/or subsidies) for producers and continues a price support program.	None.	Includes the Lugar bill, which provides for a mandatory buyout and ends price support program for tobacco farmers.
Spending	Does not attempt to address most spending issues.	Revenues would go toward smoking cessation/public health programs (approx. 10%), payments to states (approx. 35%), and reducing federal debt (approx. 55%).	Revenues may go to states, tax cuts, and certain public health measures (e.g., counteradvertising).
Environmental Tobacco Smoke Provision	Includes provisions to protect against environmental tobacco smoke, but allows states to opt out and exempts the hospitality industry (e.g., bars, restaurants, casinos).	Includes provisions to protect against environmental tobacco smoke, without allowing states to opt out. Exempts bars, but not restaurants or casinos.	Unknown, but probably none.
Liability Protections for Industry:			
1. Liability Cap	\$6.5 billion annually.	No.	No.
2. Bar on Class Actions	No.	No.	No.
3. Bar on Punitive Damages	No.	No.	No.
Antitrust Exemption	Broad exemption.	None.	Unknown.
Raise Minimum Age to Purchase Cigarettes to 21	No.	No.	Probably.
Anti-Drug Package	No.	No.	Probably.
Cap on Attorneys Fees	Arbitration mechanism to determine attorneys' fees; no cap.	No.	Probably.
Increase Packs to 30 Cigarettes	No.	No.	Probably.
<p>* Based on announcement summary, not bill; no bill yet. ** Based on ideas reported in the press and on Hill; no bill yet.</p>			

Top - out - new legislation

	AGs Settlement	McCain*	Harkin/Chafee	Conrad/Fazio**	Our Position
Payments					
Price per Pack Increase Resulting from Industry Payments	Rises to about \$.62 by 2003	\$.65 in 1999 \$.70 in 2000 \$.80 in 2001 \$ 1.00 in 2002 \$ 1.10 in 2003	\$ 1.00 in 1999 \$ 1.50 in 2000 \$ 1.50+ infl in 2001 \$ 1.50+ infl in 2002 \$ 1.50+ infl in 2003	\$.50 in 1999 \$ 1.00 in 2000 \$ 1.50 in 2001 \$ 1.50+ infl in 2002 \$ 1.50+ infl in 2003	\$.62 in 1999 \$.78 in 2000 \$.89 in 2001 \$ 1.00 in 2002 \$ 1.10 in 2003
Liability					
Caps Annual Liability	At \$5 billion. (\$4 billion fund financed by entire industry, with \$1 billion company copayment).	NOT YET RELEASED. Last known proposal: At about \$6 billion. (\$4 billion fund financed by entire industry, with \$2 billion company copayment).	At \$12 billion. (\$8 billion fund financed by entire industry, with \$4 billion company copayment).	No	No
Eliminates Punitive Damages for Past Conduct	Yes	NOT YET RELEASED. Last known proposal: Yes	No	No	No
Eliminates Class Action Lawsuits	Yes	NOT YET RELEASED. Last known proposal: Yes, eliminates past class action suits, but allows future class actions lawsuits.	No	No	No

* Based on information as of 3/29/98, not on review of legislative language.

** The Fazio bill is the House version of the Conrad bill; however, Rep. Fazio made some changes, including changes to the penalties section.

*** Preferred position as stated in chart, but reasonable limits on liability not a dealbreaker if President's other principles are met.

	AGs Settlement	McCain*	Harkin/Chafee	Conrad/Fazio**		Our Position
Industry Penalties						
Amount	\$80 million for each percentage point missed.	\$80 million for each percentage point missed between 0 - 5%; \$160 million for each percentage point bet. 6-10%; \$240 million for each percentage point over 11 %.	\$.02 per pack surcharge for every percentage point by which the youth smoking target is missed; doubles to \$.04 per pack after two consecutive years of failure; and triples to \$.06 per pack after four such years.	Conrad \$.10 per pack.	Fazio None	Per pack surcharges based on how many percentage points by which youth smoking reduction targets are missed: \$.01 for 1-10 pp \$.02 for 11-20 pp \$.03 for 21+ pp Penalties would double after three consecutive years of failure.
Caps Annual Amount	Yes, at \$2 billion	Yes, at \$3.5 billion	Yes, at \$10 billion	No		No
Makes Tax Deductible	Yes	No	No	No		No

* Based on information as of 3/29/98, not on review of legislative language.

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	AGs Settlement	McCain*	Harkin/Chafee	Conrad/Fazio**		Our Position
Company Penalties						
Amount	N/A	N/A	\$1500 per child surcharge for every child exceeding the company's target reduction level; doubles to \$3000 per child after two consecutive years of failure.	Conrad If targets missed by 1-10 pp, \$.10/ pack; 10-15 pp, \$.20/ pack; 15-20 pp, \$.30/ pack; 20 pp+, \$.40/pack.	Fazio \$.02 per pack for every percentage point by which youth smoking targets are missed.	Per pack surcharges based on how many percentage points by which youth smoking reduction targets are missed: \$.01 for 1-10 pp \$.02 for 11-20 pp \$.03 for 21+ pp If company fails by at least 30 pp for at least 3 consecutive years, \$.06 rather than \$.03 penalty. ----- Also have proposed alternative of \$3000 per child surcharge for every child exceeding the company's target reduction level.
Caps Annual Amount	N/A	N/A	No	No		No
Makes Tax Deductible	N/A	N/A	No	No		No

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** The Fazio bill is the House version of the Conrad bill; however, Rep. Fazio made some changes, including changes to the penalties section.

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CITY AND COUNTY OF SAN FRANCISCO



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April 3, 1998

Bruce / Cynthia Rice²

Elena Kagan
Domestic Policy Council
Executive Offices of the President
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Elena:

I am going to go out on a limb, here, and assume that the Elena Kagan who has been recently referred to in the press as the point person for tobacco issues on the Domestic Policy Council is the same Elena Kagan who I worked with on the Harvard Law Review in 1985-86. If so, I would like to take this opportunity to renew our acquaintance and to congratulate you on your work. I hope everything is going well for you.

Admittedly, I have not done a very good job keeping in touch with my fellow alumni. However, as you might have guessed, I too am now working on tobacco issues. I am the lead in-house attorney for the several suits that San Francisco has brought against the tobacco industry. Since our paths may cross at some point, I thought that I would drop you a line.

Along with San Francisco City Attorney Louise Renne, I have been in Washington several times to discuss the concerns that local governments have about the proposed federal tobacco legislation. These efforts are being fully supported by each of the three major national local government organizations (NACo, NLC, and the U.S. Conference of Mayors). While our efforts have been focused primarily on Congress, we have met with the White House. Louise Renne and other local government representatives had a good meeting earlier this week with your colleague, Cynthia Rice.

Our efforts to date have met with some success. For example, the Conrad bill mandates that local governments receive an "equitable portion" of the proceeds of any legislation. That bill also preserves the ability of state and local governments to continue their traditional regulation of the tobacco industry. In contrast, the McCain bill, in the form approved on Wednesday by the Senate Commerce Committee, would be disastrous for local governments. It would settle all local government tobacco claims, including San Francisco's existing law suits. Unlike the Conrad bill, the McCain bill would not provide a dime of compensation to local governments for their tobacco-related health care costs. These costs are significant, and are distinct from the Medicaid costs borne by the states. The McCain bill would also greatly diminish local government authority to police the tobacco industry in the future.

Letter to Elena Kagan
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April 3, 1998

Because of these and other issues, San Francisco and other local governments will have no choice but to oppose the McCain bill in its present form. Nevertheless, we are hopeful that our issues can be adequately addressed through negotiations before the McCain bill reaches the floor. We would like to request the Administration's assistance in this regard. We believe the Administration's support of local governments is critical in order to resolve this potentially divisive issue.

We would be happy to meet with you or with other members of the Administration to explain our position in more detail, and to make more specific recommendations concerning modifications to the McCain bill.

While I can imagine that your schedule is very full at present, I hope that the two of us can catch up the next time that I am in Washington. Judging from the pace at which things seem to be moving on the Hill, that should not be long from now. I will let you know my schedule next time I'm in town. Please give me a call if you have any questions. I look forward to speaking with you soon.

Very truly yours,



OWEN J. CLEMENTS
Deputy City Attorney

Domestic Tobacco Industry Legislative Tobacco Bill Comparison Sheet

Key settlement issue	Sen. McCain/Jones 201b	Sen. Hatch	Sen. Conrad
Settlement costs			
Payments	\$368.5	\$398.3	\$762.0
Penalties (pretax equivalent)	\$2.0	238.3	375.0
Total cost (25 years)- pretax	410.5 B	636.6 B	1,137.0 B
Per pack increase¹			
Yr. 1	\$0.35	\$0.41	\$0.50
Yr. 5	0.70	0.90	2.27
Yr. 10	0.70	1.10	2.27
Upfront payment	\$10.0	\$10.0	\$15.0
Liability protection	No class actions No recoupment actions No punis for past actions Liability cap \$5B/yr. Cannot pierce the veil Individuals can still sue	No class actions No-recoupment actions No punis for past actions Liability cap \$5B/yr. Cannot pierce the veil Individuals can still sue	Class actions allowed State Medicaid suits settled Punitive allowed No liability caps Cannot pierce the veil Individuals can still sue
Tax deductibility	All payments and penalties	All payments and penalties	Payments only
FDA Authority	Can ban after 12 years w/FDA burden of proof:	Can ban immediately but only w/ Cong. approval	Unconditional authority
Marketing restrictions	No billboard advertising B&W tombstone in adult magazines only Black & white POS	No billboard advertising B&W tombstone in adult magazines only Black & white POS	No billboard advertising B&W tombstone in adult magazines only Black & white POS
Access restrictions	Proof of age (18) up to 26 No self serve except CTS Licensing w/penalties	Proof of age (18) up to 26 No self serve except CTS Licensing w/penalties	Proof of age (18) up to 26 No self serve except CTS Licensing w/penalties

¹ Assumes industry misses all youth reduction targets
President Clinton targeting a \$1.50/pack real price increase by Yr. 10; \$1.10/pack increase by year 5 (F1998 budget)

03/03/98 18:38 DOM JONES NEWS SERVICE/ WSJ → 4565542
 FEB 27 1998 15:22 FROM: SANFORD BERNSTEIN ID: 2127881810

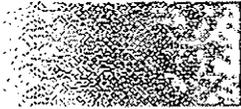
Tobacco - settlement -
 new legislation

DISCUSSION DRAFT

Issue	HEALTHY Kids	Kennedy	Hatch	Proposed Settlement
Liability Protections <i>State opt-out</i>	Gives industry immunity from Federal, State and local suits for past misconduct. Settles Castano suits. No special privilege for future misconduct. No special privileges for <i>cos. & b.</i> claims by individuals.	No provision.	Settles all current suits. Broad immunity against all lawsuits: no aggregation or punitives for past misconduct; no aggregation for future misconduct.	Settles all current suits. Broad immunity against all lawsuits: no aggregation or punitives for past misconduct; no aggregation for future misconduct.
Attorney Fees	No payments from settlement funds. Arbitration panel decides payments based on ABA ethical guidelines.	No provision.	Similar to HEALTHY Kids.	No provision.
Farmers	Based on LEAF Act. Preserves tobacco farm program; reimburses farmers for lost quota; rural development, worker retraining, scholarships.	Ends tobacco program. Buys out quota.	Ends tobacco program. Buys out quota.	No provision. (But McCain includes LEAF Act.)
Documents <i>→ Justice mtg</i>	Turns over relevant documents to FDA. Allows FDA to make documents public. Trade secrets and attorney client privilege protected unless disclosure serves public health interest.	Turns over documents to Board. Attorney client privilege protected unless three judge panel rules that it has been improperly invoked. Regular discovery preserved.	Turns over documents to document depository. Attorney client privilege protected unless three judge panel rules that it has been improperly invoked. No regular discovery.	Turns over documents to document depository. Attorney client privilege protected unless three judge panel rules that it has been improperly invoked. No regular discovery.

DISCUSSION DRAFT

Issue	HEALTHY Kids	Kennedy	Hatch	Proposed Settlement
ETS	Restricts smoking in public places. Exempts Bars, hotel guest rooms, tobacconists, prisons, casinos and private clubs.	Similar. Exempts bars, hotel guest rooms, tobacconists, and prisons.	Similar. Exempts bars, hotel guest rooms, tobacconists, casinos, bingo parlors, and restaurants with fewer than 50 seats. No smoking in prisons.	Similar. Exempts bars, hotel guest rooms, tobacconists, prisons, casinos, bingo parlors, private clubs, and restaurants other than fast food.
Liggett	Allows Liggett to have its deal with States; exempts it from that portion of payments.	No provision.	No provision.	No provision.
Spending 25	First makes LEAF payments of \$2.1 B, \$300 M to FDA, and \$200 M to Native Americans. Splits remainder as follows: 25% to Federal Health (NIH research and Medicare); 25% to States (to reimburse Medicaid; Federal share directed to kids' health); 25% to anti-tobacco programs; 25% to Children (early childhood development, education, and/or debt reduction).	43% goes to States and anti-tobacco programs. 57% gets split between health research and early childhood programs. (Note: distribution is not clear.)	Sets aside \$200 M for asbestos, \$200 M for Native Americans, and \$16 B over 25 years for agriculture. Splits remainder: 50% to States, 25% each to anti-tobacco programs and research. No-state portion subject to reduction if victims win suits against industry.	Gives 52% to States. Remainder funds anti-tobacco and trust fund for victims. (Note: allocation is very unclear.)



Jerold R. Mande

01/22/98 06:16:43 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Conrad Tobacco Bill Spending

I have additional information about the spending in Conrad's bill. Once again, Conrad's staff has asked that we keep a very close hold on this information. They anticipate that their bill will generate \$15B-\$18B/yr beginning in year 3 when the \$1.50/pack increase is fully implemented. From that amount, they take \$2.5B off the top -- \$2B per year for 10 years to fund Sen. Ford's farmer's proposal; \$300M for FDA; and \$200M for the Indian Health Service (N. Dakota politics).

The remaining \$\$ are divided as follows:

1. 25% (which Conrad's staff estimated to be \$3.5B/yr.) to fund the public health spending outlined in the attached note.
2. 20-25% will go to the states for the states unrestricted use.
3. The remaining \$\$ will be divided among Medicare, NIH, and early child development, including child care.
4. There are no \$\$ for compensation because they are not planning to place limits on liability in their bill.

----- Forwarded by Jerold R. Mande/OSTP/EOP on 01/22/98 05:48 PM -----



Jerold R. Mande

01/20/98 04:32:27 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Conrad Tobacco Bill

I received Conrad's Public Health and Other Programs funding title from HHS. Conrad's staff has asked us to keep a very close hold on it. It is Title VI of the Conrad bill. The title spells out how funds from a section 101(d)(2)(C) will be allocated and spent, but the draft provides no clue on how much money will be in 101(d)(2)(C). I will distribute it, but in the meantime here is a summary:

The title proposes to divide the \$\$ into 12 buckets controlled by the Secretary (I assume HHS):

1. 30% for smoking cessation to individuals and private, non-profit entities;
2. 25% for counter advertising;

3. 15% to NIH for tobacco related biomedical research including addiction research;
4. 10% for "anti-tobacco" research, including prevention, cessation, and social deterrents of smoking;
5. 5% to states for school-based tobacco education programs;
6. 5% to states for alcohol and illicit drug education for <18;
7. 3% for assistance and compensation for those suffering from tobacco-related illness;
8. 2.5% to expand ASSIST and IMPACT;
9. 1.76% for international tobacco control to WHO and foreign countries;
10. 1% for college tobacco education programs targeting 18-24;
11. 1% for event sponsorship; and
12. 0.083% for the American Center on Global Health and Tobacco (a new private, not-for-profit corporation) and associated trust fund.

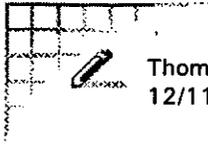
Message Sent To:

Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Christopher C. Jennings/OPD/EOP
Thomas L. Freedman/OPD/EOP
Donald H. Gips/OVP @ OVP
Toby Donenfeld/OVP @ OVP

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Donald H. Gips/OVP @ OVP
Toby Donenfeld/OVP @ OVP
Joshua Gotbaum/OMB/EOP

Tobacco - retirement -
new legislation



Thomas L. Freedman
12/11/97 11:17:42 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Christopher C. Jennings/OPD/EOP, Jeanne Lambrew/OPD/EOP

cc: Mary L. Smith/OPD/EOP

Subject: JCT official tobacco Scores

I just got JCT's official scoring of Kennedy's bill. It is \$126.7 billion through 2007 without deductibility. A guy named Mike Udell at JCT supposedly did the work. Kennedy's staff is evidently coming up with their own numbers.

?

Tobacco
Legislation

The Public Health and Education Resource (PHAER) Act

Introduced in the Senate by Sen. Frank R. Lautenberg (D-NJ)
and in the House by Rep. James V. Hansen (R-UT)

PHAER would raise the price of cigarettes to a level that would decrease youth smoking by half.

- ◆ PHAER would place a \$1.50 Public Health and Education Resource (PHAER) per-pack fee on cigarettes and a comparable fee on other tobacco products.
- ◆ The PHAER fee would be phased in by 50-cent increments over three years.
- ◆ In the fourth year, the PHAER fee would be indexed for inflation to ensure that youth smoking does not rise again due to inflationary effects. This index will be based on the CPI, the Medical CPI or an increase of 3%, whichever is greater.
- ◆ The PHAER fee will raise approximately \$49.4 billion over 25 years (using the tobacco consumption projections of the Joint Committee on Taxation), an average of almost \$20 billion per year. Of these funds:

75% (an average of \$15 billion per year) will be distributed at the State level for:

- ▶ Smoking cessation programs and services
- ▶ School and community-based tobacco education and prevention programs
- ▶ State-level counter-advertising campaigns
- ▶ ASSIST and similar community-based tobacco control programs
- ▶ Expansion of the Children's Health Insurance Program created in the 1997 Budget Reconciliation Act
- ▶ Early childhood development programs through the Maternal Child Health Block Grant and WIC
- ▶ Other appropriate public health uses

25% (an average of \$5 billion per year) will be distributed at the Federal level for:

- ▶ Research and prevention programs at NIH and CDC
- ▶ FDA jurisdiction over tobacco products
- ▶ USDA programs to assist tobacco farmers, their families and their communities
- ▶ A national counter-advertising campaign
- ▶ Medicare prevention programs and premium and cost-sharing assistance for low-income Medicare beneficiaries
- ▶ International Programs to decrease worldwide tobacco-related illness
- ▶ The Drug Czar to conduct tobacco education and prevention programs
- ▶ The VA to conduct tobacco education, intervention and outreach programs.

The Public Health and Education Resource (PHAER) Act

Introduced by Sen. Frank R. Lautenberg (D-NJ) & Rep. James V. Hansen (R-UT)

Section-by-Section Summary

Section 101 -- Imposition and Use of Increased Taxes on Tobacco Products

Cigarette Tax

The excise tax will be phased in as follows:

<u>Year</u>	<u>Increase</u>	<u>Total tax per pack</u>
1999	\$0.50	\$0.74
2000	\$0.50 (plus \$0.10 from BBA)	\$1.34
2001	\$0.50	\$1.84
2002	\$0.00 (plus \$0.05 from BBA)	\$1.89
2003	<i>Tobacco tax annually indexed to CPI, Medical CPI, or 3 percent, whichever is greater</i>	

Other Tobacco Products

- All taxes on other tobacco products are increased proportionally.

Indexing

- The tobacco taxes will be annually indexed by the CPI, the Medical CPI or 3 percent, whichever is greater.

Floor Stocks Taxes

- All tobacco products that have been distributed by the manufacturer before the increase in taxes called for periodically in this bill shall be taxed at the new rate.

Section 102 -- Tax Treatment for Certain Tobacco-Related Expenses

- The increased taxes contained in this bill will be nondeductible for the tobacco companies.

Section 201

- A new Trust Fund is created: The Public Health and Education Resource fund. This Trust Fund will be created in the Department of the Treasury.

The Secretary of Health and Human Services shall distribute 75 percent of the annual amounts collected in the Trust Fund to the States for the following programs:

*(not less than/
nor more than)*

10/30*	Tobacco education and prevention programs in schools
10/30	Smoking cessation programs
10/30	Counter advertising programs
10/25	State Children's Health Insurance Program
5/10	WIC/Maternal Child Health Services Block Grant
1/3	ASSIST and other local tobacco control programs
0/5	State health block grant

Allocation Rules

- Each state grant level will be based on the percentage agreed upon by the Attorneys General in their Report by the Allocation Subcommittee on September 16, 1997.

Maintenance of Effort

- States must maintain the same spending on current programs that they spent the year before.

Federal Funding

Twenty-five percent of the annual amounts collected in the Trust Fund shall go to the following Federal programs:

- ▶ 10 percent for FDA's tobacco control efforts
- ▶ 25 percent for USDA programs to assist tobacco farmers and rural communities
- ▶ 20 percent for CDC's tobacco control efforts and NIH
- ▶ 20 percent for Medicare preventive benefits and increased support for low income Medicare beneficiaries (QMBs and SLMBs)
- ▶ 20 percent for HHS' tobacco counter advertising
- ▶ 2 percent for USAID's efforts to decrease tobacco consumption overseas
- ▶ 2 percent for Tobacco prevention programs at the Office of National Drug Control Policy (Drug Czar)
- ▶ 1 percent for the VA to conduct tobacco education, intervention and outreach programs

Section 301 -- Federal Standards with Respect to Tobacco Products

Repeals Federal preemption of state tobacco laws and regulations.

Section 401 -- Sense of the Senate Regarding Comprehensive Tobacco Legislation

Table 1.
INCREASE IN FEDERAL TAX REVENUES RESULTING FROM THE PHAER ACT
 (in billions of dollars)

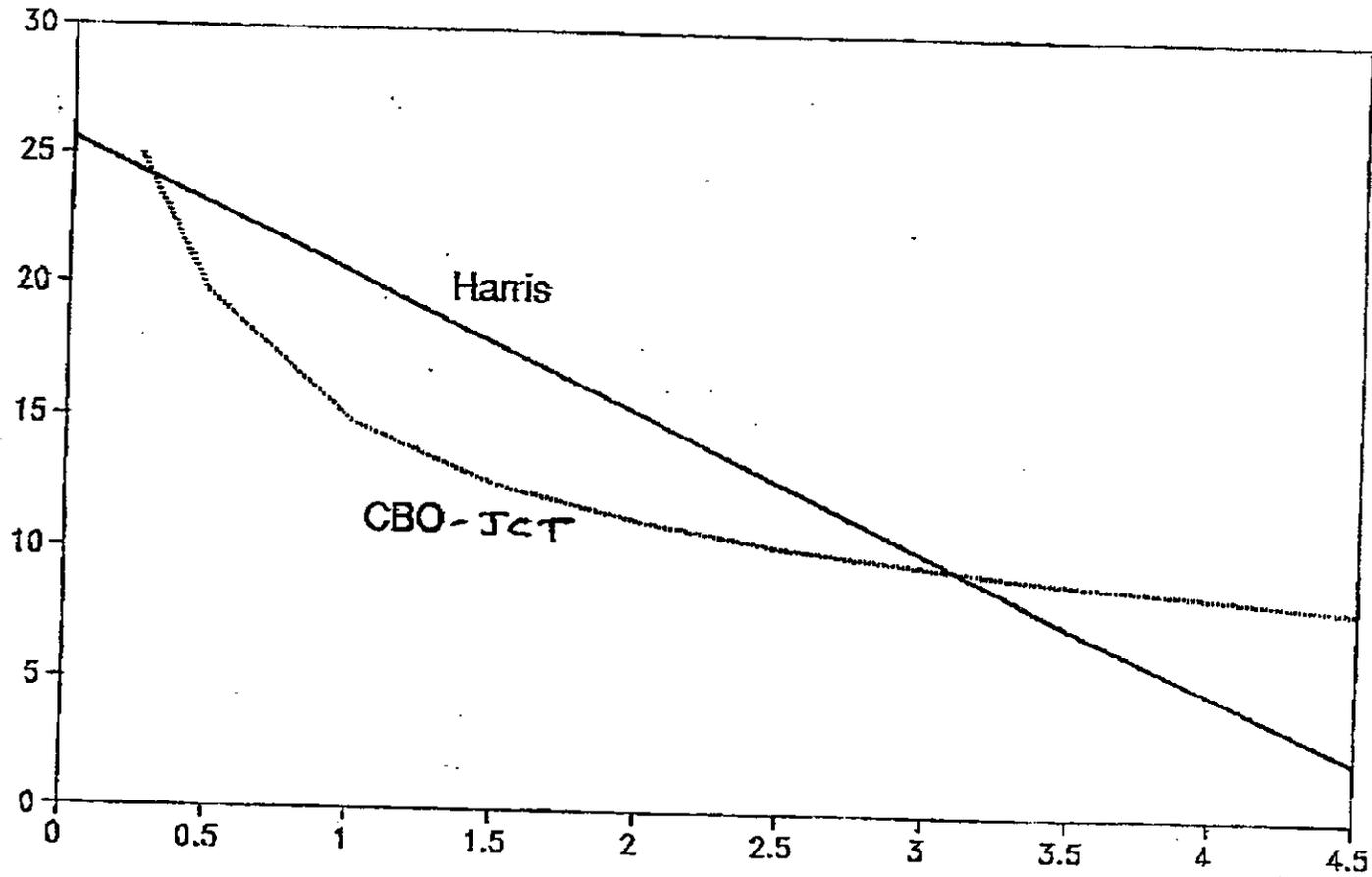
Year	Proposed \$1.50-per-pack tax, indexed for inflation	Inflation indexing of existing tobacco taxes	Non-deductibility of proposed tax and inflation adjustments	Total increase in tax revenues
1999	\$3.2	\$0.0	\$1.1	\$4.3
2000	7.4	0.0	2.6	10.0
2001	12.0	0.0	4.2	16.2
2002	11.8	0.0	4.1	15.9
2003	12.1	0.3	4.3	16.6
2004	12.6	0.5	4.6	17.8
2005	13.3	0.8	5.0	19.1
2006	14.2	1.1	5.3	20.6
2007	15.0	1.4	5.7	22.1
2008	15.8	1.7	6.1	23.6
2009	16.2	2.0	6.4	24.6
2010	16.7	2.3	6.7	25.7
2011	17.2	2.7	7.0	26.9
2012	17.7	3.0	7.3	28.0
2013	18.3	3.4	7.6	29.2
2014	18.8	3.7	7.9	30.5
2015	19.4	4.1	8.2	31.7
2016	20.0	4.5	8.6	33.0
2017	20.6	4.9	8.9	34.4
2018	21.2	5.3	9.3	35.8
2019	21.8	5.7	9.6	37.2
2020	22.5	6.2	10.0	38.7
2021	23.1	6.6	10.4	40.2
2022	23.8	7.1	10.8	41.8
2023	24.6	7.6	11.2	43.4
TOTAL	\$419.2	\$75.1	\$173.0	\$667.3

Sources for 10-year, pre-inflation revenue estimates: Joint Committee on Taxation and Congressional Budget Office.

419 + 75 = PHAER FUND

Does not go in the PHAER FUND

Cigarette Consumption as a Function of the Tax Level



The Public Health and Education Resource (PHAER) Act

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2003	<i>Tobacco tax annually indexed to CPI, Medical CPI, or 3 percent, whichever is greater</i>	

Other Tobacco Products

- All taxes on other tobacco products are increased proportionally.

Indexing

- The tobacco taxes will be annually indexed by the CPI, the Medical CPI or 3 percent, whichever is greater.

Floor Stocks Taxes

- All tobacco products that have been distributed by the manufacturer before the increase in taxes called for periodically in this bill shall be taxed at the new rate.

Section 102 -- Tax Treatment for Certain Tobacco-Related Expenses

- The increased taxes contained in this bill will be nondeductible for the tobacco companies.

Section 201

- A new Trust Fund is created: The Public Health and Education Resource fund. This Trust Fund will be created in the Department of the Treasury.

The Secretary of Health and Human Services shall distribute 75 percent of the annual amounts collected in the Trust Fund to the States for the following programs:

*(not less than/
nor more than)*

10/30*	Tobacco education and prevention programs in schools
10/30	Smoking cessation programs
10/30	Counter advertising programs
10/25	State Children's Health Insurance Program
5/10	WIC/Maternal Child Health Services Block Grant
1/3	ASSIST and other local tobacco control programs
0/5	State health block grant

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- Each state grant level will be based on the percentage agreed upon by the Attorneys General in their Report by the Allocation Subcommittee on September 16, 1997.

Maintenance of Effort

- States must maintain the same spending on current programs that they spent the year before.

Federal Funding

Twenty-five percent of the annual amounts collected in the Trust Fund shall go to the following Federal programs:

- ▶ 10 percent for FDA's tobacco control efforts
- ▶ 25 percent for USDA programs to assist tobacco farmers and rural communities
- ▶ 20 percent for CDC's tobacco control efforts and NIH
- ▶ 20 percent for Medicare preventive benefits and increased support for low income Medicare beneficiaries (QMBs and SLMBs)
- ▶ 20 percent for HHS' tobacco counter advertising
- ▶ 2 percent for USAID's efforts to decrease tobacco consumption overseas
- ▶ 2 percent for Tobacco prevention programs at the Office of National Drug Control Policy (Drug Czar)
- ▶ 1 percent for the VA to conduct tobacco education, intervention and outreach programs

Section 301 -- Federal Standards with Respect to Tobacco Products

Repeals Federal preemption of state tobacco laws and regulations.

Section 401 -- Sense of the Senate Regarding Comprehensive Tobacco Legislation

ENACT

Effective National Action to Control Tobacco

- A Public Health Coalition -

**American Academy of Family Physicians
American Academy of Pediatrics
American Cancer Society
American College of Chest Physicians
American College of Preventive Medicine
American Heart Association**

**American Medical Association
Association of State & Territorial
Health Officials
Campaign for Tobacco-Free Kids
National Association of County
and City Health Officials
Partnership for Prevention**

October 28, 1997

**The Honorable Frank R. Lautenberg
United States Senate**

**The Honorable James V. Hansen
United States House of Representatives**

Dear Senator and Congressman:

On behalf of our millions of public health officials and professionals, health care providers and volunteer members of ENACT, the coalition for Effective National Action to Control Tobacco, we applaud the introduction of the Public Health and Education Resource (PHAER) Act.

We particularly want to thank you for your leadership in reaffirming what the members of the coalition have said in the ENACT consensus statement regarding increases in the cost of tobacco products. Experts in the area of tobacco control agree that significant increases in the cost per pack deter children and others from taking up the use of tobacco. The ENACT coalition believes strongly that such an increase in the federal excise tax is essential.

In addition to providing for a \$1.50 excise tax per pack, indexed to inflation, and the nondeductibility of those new taxes, you have addressed many essential public health programs. Adequate funding of these programs is integral to comprehensive, sustainable, effective, well-funded tobacco control legislation. We look forward to working with you and the supporters of your legislation to get action on tobacco now.

Signed,

**American Academy of Pediatrics
American Cancer Society
American College of Preventive Medicine
American Heart Association
American Medical Association
Campaign for Tobacco Free Kids
National Association of County and City Health Officials
Partnership for Prevention**

**P.O. Box 65168
Washington, DC 20035
Phone: (202) 293-1405**



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Fran Du Melle
Deputy Managing Director

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Phone: (202) 785-3355
Fax: (202) 452-1805
E-mail: info@lungusa.org
America Online: keyword ALA
Internet: <http://www.lungusa.org>

National Headquarters:
1740 Broadway
New York, NY 10019-4374

John R. Garrison
Managing Director

+ AMERICAN
LUNG
ASSOCIATION®

October 23, 1997

The Honorable Frank Lautenberg
United States Senate
Washington, D.C. 20510

Dear Senator Lautenberg:

The American Lung Association commends you on the introduction of the Public Health and Education Resource Act (PHAER). As you know, the American Lung Association has pursued a significant price increase in the federal cigarette excise tax for many years.

Tobacco use is the nation's leading preventable cause of death and disability. Each year an estimated 419,000 people die from diseases directly caused from smoking. Three thousand children start smoking each day in this country. One thousand of them will eventually die from a smoking-related disease. Smoking costs this nation at least \$97.2 billion annually. Of that total cost, \$22 billion is paid by the Federal government. Over the next 20 years, Medicare alone will spend an estimated \$800 billion to care for people with smoking related illnesses.

Reducing tobacco consumption among our nation's youth has long been a goal of the American Lung Association. The bulk of academic research indicates that a sharp and sudden increase in the price of tobacco products has the effect of lowering smoking rates among teens. Raising the price per pack by at least \$1.50 or more would help achieve that desired outcome.

The American Lung Association applauds your continued efforts and leadership in reducing tobacco consumption, especially among our youth, and we look forward to working with you as this tobacco-related legislation progresses through Congress.

Sincerely,

Fran DuMelle
Deputy Managing Director

**When You Can't
Breathe,
Nothing Else
Matters®**

Founded in 1904, the American Lung Association includes affiliated associations throughout the U.S., and a medical section, the American Thoracic Society.





October 23, 1997

The Honorable Frank R. Lautenberg
United States Senate
SH-506 Hart Senate Office Building
Washington, D.C. 20510-3002

Dear Senator Lautenberg:

The National Association of Counties (NACo) is pleased to support your bill, the Public Health and Education Resource (PHAER) Act. The legislation is a strong step forward for public health activities related to tobacco and helps focus the congressional debate on legislative language rather than broad concepts.

We particularly support your recognition of the role of counties and other local governments in the provision of health services. Counties, in collaboration with states, will be key to the success of the public health programs outlined in the PHAER trust fund, including tobacco education and prevention, smoking cessation, and counter advertising. NACo appreciates your work to ensure a local government role in the planning and implementation of the trust fund's health activities.

Thank you again for your leadership on this issue. Dan Katz of your staff has been very responsive to our concerns. NACo looks forward to working with you and your staff as tobacco legislation moves forward.

Very Truly Yours,

A handwritten signature in black ink that reads "Randy Johnson". The signature is written in a cursive, flowing style.

Randy Johnson, President, NACo
Hennepin County Commissioner

Tobacco - settlement - new legislative

and

Tobacco - settlement - attorney's fees

BR/EL/JW

FYI.

Tom

> 10

1 of 1 items

CQ's WASHINGTON ALERT 11/03/97

*** FULL REPORT -- DIGEST, LEGISLATIVE ACTION, COSPONSORS, SPEECHES ***

MEASURE: HR2740

SPONSOR: McInnis (R-CO)

OFFICIAL TITLE: A bill to limit attorneys' fees in the tobacco settlement.

QUICK REFERENCE: Limit attorneys' fees in global tobacco settlement

INTRODUCED: 10/24/97

COSPONSORS: 2 (Dems: 1 Reps: 1 Ind: 0)

COMMITTEES: House Judiciary

CQ BILLWATCH BRIEF:

By Pherabe Kolb, CQ Staff Writer

HR2740 would limit the amount of money that attorneys could receive for working on the legal settlement between the states' attorneys general and the tobacco industry.

Bill sponsor Scott McInnis, R-Colo., said although tobacco companies are expected to pay as much as \$368.5 billion to states for the Medicaid costs of treating individuals with smoking-related illnesses, nearly \$111 billion of those funds likely will be used to cover the legal fees of hundreds of lawyers who worked on the deal.

"While attorneys are entitled to be paid for their time and effort," the bill states, "the maximum possible amount of moneys from any tobacco settlement should go directly to benefit public health."

The bill would limit attorneys' fees to \$150 per hour and reimbursement of out-of-pocket expenses.

Before any lawyers could receive their payments, they would have to submit a detailed billing statement to Congress and the public to account for the time they worked.

CQ BILLWATCH INSIGHT:

No action has been scheduled on HR2740, which was referred to the House Judiciary Committee.

LEGISLATIVE ACTION:

10/24/97 Referred to Committee on the Judiciary (CR p. H9558)

> 11

1 of 1 items

CQ's WASHINGTON ALERT 11/03/97

HR2740

McInnis (R-CO)
Introduced in House

10/24/97

(112 lines)

To limit attorneys' fees in the tobacco settlement.

Special typefaces used in this bill version:

// \\ Italic
!! !! Bold roman

Item Key: 6802

105TH CONGRESS
1ST SESSION

H. R. 2740

To limit attorneys' fees in the tobacco settlement.

IN THE HOUSE OF REPRESENTATIVES

October 24, 1997

Mr. MCINNIS (for himself, Mr. COX of California, and Mr. MCHALE)
introduced the following bill; which was referred to the Committee
on the Judiciary

A BILL

To limit attorneys' fees in the tobacco settlement.

//Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,\\

!!SECTION 1. FINDINGS!!

Congress makes the following findings:

(1) Under the proposed settlement between the tobacco
industry and the various State Attorneys General, the attorneys
involved in negotiating the settlement are entitled to
reasonable fees.

(2) Under the proposed settlement, the tobacco companies
would pay \$368,500,000,000 to be allocated among various public

health programs.

(3) It is expected that of the total tobacco settlement of \$368,500,000,000 as much as \$111,000,000,000 could be taken away from public health programs for attorneys' "contingency fees".

(4) Since no national settlement can take effect without Congressional action to change existing law, the approval of Congress is necessary for the terms of the settlement, including the part relating to attorneys' fees, to take effect.

(5) While the average annual gross receipts for the 100 top-grossing law firms in America last year was \$18,000,000, a 30 percent contingency fee would yield an average of approximately \$925,000,000 per law firm involved in the litigation pending prior to the settlement.

(6) A casual decision at a young age to use tobacco products often leads to addiction, serious disease, and premature death as an adult. Nearly 90 percent of adult smokers began smoking at or before the age of 18. Smoking rates among youngsters are at their highest levels in 16 years. Every day another 3,000 children and adolescents become regular smokers. Therefore, the epidemic of youth addiction has enormous public health consequences.

(7) While attorneys are entitled to be paid for their time and effort, the maximum possible amount of moneys from any tobacco settlement should go directly to benefit public health, with the highest priority being given to efforts focused on persuading children not to smoke rather than to awards leading to unreasonable attorneys' fees.

!!SEC. 2. LIMIT ON DIVERSION OF PUBLIC HEALTH FUNDS TO ATTORNEYS.!!

(a) GENERAL LIMITATION.--Notwithstanding any other provision of law, any attorneys' fees paid in connection with the settlement of an action maintained by a State against 1 or more tobacco companies to recover tobacco-related medicaid expenditures or for other causes of action involved in the settlement agreement dated June 20, 1997, shall not exceed \$150 per hour, together with reimbursement of actual out-of-pocket expenses as approved by the court in such action.

(b) FEE ARRANGEMENTS.--Subsection (a) shall apply to attorneys' fees provided for or in connection with an action of the type described in such subsection under any--

- (1) court order;
- (2) settlement agreement;
- (3) contingency fee arrangement;
- (4) arbitration procedure;
- (5) alternative dispute resolution procedure (including mediation); or
- (6) other arrangement providing for the payment of attorneys' fees.

(c) REQUIREMENTS.--No award of attorneys' fees shall be made under any national tobacco settlement until the attorneys involved have--

- (1) provided to the Congress a detailed time accounting

with respect to the work performed in relation to any legal action which is the subject of the settlement or with regard to the settlement itself; and

(2) made public disclosure of the time accounting under paragraph (1) and any fee arrangements entered into, or fee arrangements made, with respect to any legal action that is the subject of the settlement.

(d) EFFECTIVE DATE.--The limitation on the payment of attorneys' fees contained in this section shall become effective on the date of enactment of any Act enacted in connection with the national tobacco settlement.

(e) REPORT.--Each attorney whose fees are subject to this section shall, within 30 days of the date of the enactment of this Act, submit to Committees on the Judiciary of the House of Representatives and the Senate a comprehensive record of the time and expenses for which the fees are to be paid. Such record shall be subject to section 1001(a) of title 18, United States Code.

There are no more items to read.

Results: 1 items in BILLTEXT

Search criteria used:

RESEARCH BILL:HR2740

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Sorted by bill number with version in ascending order

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| 3 SORT retrieved versions | 9 BROWSE peruse terms in context |
| 4 SAVE bill numbers in a list | 10 EXCERPT continuous context display |
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| 6 SCAN for list of bill versions | 12 RESEARCH Bills in other databases |

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1 of 1 items

CQ's WASHINGTON ALERT 11/03/97

*** FULL REPORT -- DIGEST, LEGISLATIVE ACTION, COSPONSORS, SPEECHES ***

MEASURE: HConRes140

SPONSOR: McInnis (R-CO)

OFFICIAL TITLE: Concurrent resolution expressing the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

QUICK REFERENCE: Express sense of Congress that legal fees for tobacco settlement be disclosed

INTRODUCED: 07/31/97

COSPONSORS: 0 (Dems: 0 Reps: 0 Ind: 0)

COMMITTEES: House Judiciary

CQ BILLWATCH BRIEF:

By Emily Pierce, CQ Staff Writer

HCONRES140 would ask that lawyers representing the states in the recent tobacco settlement disclose their fees.

On June 20, 1997, the tobacco industry reached a \$368.5 billion agreement with 40 states that sued to recover Medicaid funds for the costs of treating smoking-related illnesses. Tobacco companies agreed to make payments to the states over 25 years, and to Food and Drug Administration (FDA) regulation in exchange for immunity from future lawsuits. The agreement requires congressional approval for such issues as FDA regulation and advertising restrictions.

The resolution would express the sense of Congress that before any legislation codifying the settlement is enacted, the lawyers that represent the states should disclose their anticipated fees. Most of the states retained private attorneys to represent them in the tobacco lawsuits, and 25 of the 40 are using the same legal firm -- Scruggs, Millette of Mississippi.

Under the settlement, the tobacco companies agreed to pay the states' attorneys' fees separately from the \$368.5 billion. Anticipated fees could be as much as 25 percent of the amount recovered -- almost \$92 billion. Conservative estimates hover between \$7 billion and \$14 billion.

CQ BILLWATCH INSIGHT:

No action has been scheduled on HCONRES140, which was referred to the House Judiciary Committee.

CRS DIGEST:

Calls for each plaintiff attorney, before the consideration of any legislation regarding the comprehensive tobacco settlement, to fully disclose his or her anticipated fees as a result of such settlement agreement.

CRS SUBJECT INDEX TERMS:

Law
Actions and defenses
Agriculture
Business
Congress
Consumers
Government and business
Legal fees
Legislation
Medical care
Medicine
Politics and government
Products liability
Tobacco
Tobacco industry
Tobacco settlement

LEGISLATIVE ACTION:

07/31/97 Referred to Committee on the Judiciary (CR p. H6705)

There are no more items to display.

Results: 1 items in BILLTRACK

Search criteria used:

BILL:HCONRES140

Results are: Bill number as entered

SEARCH/DISPLAY OPTIONS

1 NARROW your search

2 REFINED your search on prime topic

13 DETAIL action, amendments, speeches

14 ACTI

1 of 1 items

CQ's WASHINGTON ALERT 11/03/97

HCONRES140 McInnis (R-CO) 07/31/97 (50 lines)
 Introduced in House

Expressing the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

Special typefaces used in this bill version:

 // \\ Italic
Item Key: 5446

105TH CONGRESS
1ST SESSION

H. CON. RES. 140

Expressing the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

=====

IN THE HOUSE OF REPRESENTATIVES

July 31, 1997

Mr. MCINNIS submitted the following concurrent resolution; which was referred to the Committee on the Judiciary

=====

CONCURRENT RESOLUTION

Expressing the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

Whereas the average American earned \$25,852 in 1994;

Whereas the average Colorado citizen earned \$74 per day in 1995;

Whereas the average hourly wage earner earns \$12.14 per hour in the United States;

Whereas those involved in negotiating a comprehensive tobacco settlement are entitled to reasonable compensation for their services; and

Whereas : Now, therefore, be it

//Resolved by the House of Representatives (the Senate concurring)\\ That it is the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

There are no more items to read.

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Bills w/ attorney fees : tobacco

> 6

✓ 1 HConRes140 McInnis (R-CO) 07/31/97
Concurrent resolution expressing the sense of Congress that before
the consideration of any legislation regarding the comprehensive
tobacco settlement each plaintiff attorney shall fully disclo
se
t the attorney's anticipated fees as a result of such settlemen
agreement.
(BILLTRACK; BillWatch 08/28/97; CRS 10/06/97 -- digest 26 lines)
Item Key: 4098

2 HR2264 Porter (R-IL) 07/25/97
A bill making appropriations for the departments of Labor, Health
and Human Services, and Education, and related agencies for the
fiscal year ending Sept. 30, 1998, and for other purposes.
(BILLTRACK; BillWatch 09/25/97; CRS 10/22/97 -- digest 656 lines)
Item Key: 3931

3 S1061 Specter (R-PA) 07/24/97
An original bill making appropriations for the Departments of
Labor, Health and Human Services, and Education, for the fiscal
year ending Sept. 30, 1998, and for other purposes.
(BILLTRACK; BillWatch 09/24/97; CRS 10/22/97 -- digest 626 lines)
Item Key: 3885

✓ 4 HR2740 McInnis (R-CO) 10/24/97
A bill to limit attorneys' fees in the tobacco settl
ement.
(BILLTRACK; BillWatch 10/31/97; no CRS information available)
Item Key: 4867

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Tobacco - settlement - new
~~Kennedy bill~~
new legislation



Toby Donenfeld @ OVP

11/07/97 05:20:55 PM



Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Kennedy-Lautenberg-Durbin bill -- Has anyone seen the bill yet?

bc-TFK-smokefree-act

TFK Statement on Healthy and Smokefree Children Act

To: National Desk, Health Writer

Contact: Shelley Caplan or Bernadette Voelker, 202-296-5469,
both of the Campaign for Tobacco-Free Kids

WASHINGTON, Nov. 7 /U.S. Newswire/ -- The following is a
statement by Matthew Myers, executive vice president and general
counsel of the Campaign for Tobacco-Free Kids, regarding
introduction of the Healthy and Smokefree Children Act:

The Campaign for Tobacco-Free Kids applauds today's introduction
of the Healthy and Smokefree Children Act by Sens. Kennedy,
Lautenberg and Durbin. We welcome the introduction of this bill. It
moves us an important step closer to the enactment of legislation
that will reduce youth tobacco use, save lives and end our nation's
tobacco epidemic. We thank these three members for their
introduction of this bill and their longstanding commitment to
protect children from tobacco.

The Campaign is committed to working with the entire Congress to
develop bipartisan legislation that will have widespread support in
the public health community. A comprehensive, well-funded and
sustainable tobacco control policy is essential to truly protect
the lives of America's kids. -O-/U.S. Newswire 202-347-2770/
APNP-11-07-97 1658EST

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