NLWJC - Kagan
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Tobacco-Settlement: New Legislation-McCain: Amendments [1]

Tob - set - new leg - McCain - amendments

Leahy Third Revised Law Enforcement Funding
June 5, 1998

The floor for the law enforcement band within the Public Health Account will be increased from 17.5% to 21.5%. This will produce an extra $100 million per year. The new numbers will be allocated as set forth below.

Year	Total	FDA%	FDA $	State LE Grants	Treasury	Other
1	800m	25%	200m	($500m)	10% $80m	$20m
2	600m	30%	180m	40% ($240m)	10% $60m	$120m
3	700m	40%	280m	40% ($280m)	10% $70m	$70m
4	700m	40%	280m	40% ($280m)	10% $70m	$70m
5	700m	40%	280m	40% ($280m)	10% $70m	$70m
Total	$3.5b	1.22b		$1.58b	$350m	$350m

These are minimum amounts for each year, and may be spent over 3 years.

Amounts for FDA and Treasury will be stated in percentages for each year. Amounts for state and local law enforcement grants will be stated in dollar terms the first year, and in percentage terms for the remaining years.

This provides an extra $100 million for FDA in the first year, and $20 million less in the out years than originally requested. Because the funds can be spent over 3 years, the result is a real increase of $20 million above what the McCain bill provides for FDA over 5 years. Treasury will receive $350 million over the 5 years, or the amount requested rounded upwards.

No minimum amount has been specified in the McCain bill for the state licensing grants. These would fall into the "other" funds and be strictly subject to appropriations. The "other" funds available significantly exceed the $200 million over 5 years intended for state licensing, so there remains significant flexibility in funding for all purposes.

Tob-xt-new lp- McCain-
amendments
and
Tob-xt-smuggling

Cynthia A. Rice 06/03/98 02:13:58 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Cynthia Dailard/OPD/EOP

cc:

Subject: Problem with the Treasury anti-smuggling floor

Josh is not wild about the idea of a floor for Treasury anti-smuggling activities. He argues that we should make sure that the appropriators (as well as the Commerce Committee) are alright with this before we go ahead. He's amazed that the appropriators are on board now, but worries that more restrictions will change that. He also argues that ATF is not as hated as FDA on the Hill (Congress doesn't propose to zero them out, just flat line them) and that Treasury is well taken care of in the current structure (being one of four enforcement agencies dividing up a given pot of money, with the capacity to levy fees that the appropriators won't be able to spend on anything else.) He suggests we push back hard on Leahy to restore only the FDA floor, and, if he won't do so without adding more floors, arrange to go to discuss the issue with the appropriators.

Given this, I'm not quite sure how to proceed. I'm tempted to tell Treasury that we're fine with it, but OMB is objecting. Of course, I do now have in hand the spending info Leahy would need. Or we could proceed as Josh suggests. What kind of stinks here is that the original FDA floor came from Rich's somewhat outside the OMB process conversations with Jeffords and others, and now Treasury is trying to play by the rules and is getting the run around.

Here's the spending OMB and Treasury staff are close to agreeing would be needed for ATF and Customs anti-smuggling efforts -- total is $327 million over 5 (out of $2.9 billion, $1.2 billion of which is earmarked for FDA).

(in millions)

	FY 99	FY 00	FY 01	FY 02	FY 03
ATF	**45**	**38**	**53**	**69**	**73**
Customs	11	8	10	10	10
Total Treasury	**56**	**46**	**63**	**79**	**83**

ATF would hire about 160 inspectors, agents, and analysits, ramping up to 450 positions over five years to implement a regulatory and enforcement regime for the tobacco distribution chain, including licensing, verifying licensee qualifications, conducting audits, and undertaking investigations concerning diversion of tobacco products.

Customs would hire about 120 inspectors and import analysts to conduct enforcement at the border and trend analysis, in addition to purchasing some detection technology for placement at ports of entry.

Tob-ser-new legis-
McCain-amendments

Cynthia A. Rice 06/02/98 03:53:51 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP
cc: Jose Cerda III/OPD/EOP, Elena Kagan/OPD/EOP, Cynthia Dailard/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP
bcc:
Subject: Re: Leahy Amendment

I just relayed our strong objection to deleting the FDA floor to John Tanner of Leahy's staff. He says they are not opposed to a funding floor for the FDA, but they think it's a bit unfair to give a guarantee to FDA, but not to other enforcement agencies. At the same time, Neal Wolin of Treasury says that Summers and Rubin are getting whipped up* about Treasury getting all these new responsibilities without adequate funding, and they are on the verge of making calls. He's holding them off for now, but he says they want:

- A floor for federal anti-smuggling efforts -- $350 million over 5 years is their current thought (the bill now has $1.2 billion over 5 for FDA);
- State and local law enforcement anti-smuggling funds (which Leahy would add) to go through Treasury, not Justice. Jose thinks that the cops prefer DOJ, but care most about the money going directly to the locals, rather than the agency.

What do you think? Given Summers and Rubin's interest, we should decide soon.

* An underutilized phrase (in Emily Bromberg's absence)

Bruce N. Reed

Bruce N. Reed
06/02/98 01:13:38 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP
cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Cynthia Dailard/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP
Subject: Re: Leahy Amendment

Yes, getting rid of FDA's floor is a dealbreaker for us supporting Leahy. We should tell them not to do that.

Tob-RT-new leps -
McCain - amendments

Jose Cerda III 06/02/98 11:57:32 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Cynthia A. Rice/OPD/EOP, Cynthia Dailard/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP
Subject: Leahy Amendment

BR/EK:

I sent over the latest version of the Leahy amendment yesterday. If you haven't had a chance to look at it, what it does is make direct grants to state and local law enforcement (as administered by DOJ or Treasury -- still up in the air) one of the four activities eligible for a minimum of 17.5% and maximum of 22.5% of the public health funds. However, the amendment also strikes the language guaranteeing FDA a minimum of these funds. As I understand from Team Leader Rice, the minimum for FDA enforcement was very important to us -- and that we expected FDA to get more than 40% of these funds (or about $1.2 billion of an estimated $2.9 billion). Is this a deal-breaker for us supporting Leahy? Should someone visit w/Leahy's folks on this issue?

Jose'

Tob-sr-now leg—
McCain-amendments

THE WHITE HOUSE

WASHINGTON

6-1-98

BR/EK:

LATEST VERSION OF
THE LEAHY AMENDMENT.

Joe

O:\BAI\BAI98.B74 S.L.C.

AMENDMENT NO. ____ Calendar No. ____

Purpose: To modify provisions relating to anti-smuggling.

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

S. 1415

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.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. LEAHY

Viz:

In section 451(b)(2)(D)—

(1) in clause (i), by striking subclauses (I) and (II); and

(2) by inserting after clause (iii), the following:

"(iv) Grants, to be administered by the Attorney General in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, to States for State and local law enforcement of anti-smuggling provisions of this Act.".

In section 1137(b), insert after "fined" the following: "in an amount up to 3 times the dollar amount of the taxes avoided or attempted to be avoided through the action that constitutes such a violation, fined".

In section 1138(e)—

(1) in paragraph (2), by striking "and" at the end;

(2) in paragraph (3), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(4) in subsection (a), by inserting after 'fined' the following: 'in an amount up to 3 times the dollar amount of the taxes avoided or attempted to be avoided through the action that constitutes such a violation, fined'.".

After section 1140, insert the following new section:

SEC. 1141. SENTENCING FOR ILLEGAL TRAFFICKING IN TOBACCO PRODUCTS.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend its guidelines and its policy statements, if appropriate, for all un-

1 lawful acts of trafficking in tobacco products. The Com-
2 mission shall submit to Congress explanations therefore
3 and any additional policy recommendations for combating
4 tobacco offenses.

5 (b) IN GENERAL.—In carrying out this section, the
6 United States Sentencing Commission shall—

7 (1) ensure that the sentencing guidelines and
8 policy statements for offenders convicted of offenses
9 described in subsection (a), and any recommenda-
10 tions submitted under such subsection, reflect the
11 strong public policy against such offenses, recognize
12 the health risks of tobacco products and the special
13 risks to minors of tobacco addiction, reflect the piv-
14 otal potential role of tobacco manufacturers in large-
15 scale smuggling schemes, and carry sufficient pen-
16 alties to deter and punish any involvement by to-
17 bacco product manufacturers and others, includ-
18 ing—

19 (A) trafficking in contraband tobacco prod-
20 ucts;

21 (B) failure to pay any tax on or mark any
22 tobacco product, or participation in the repack-
23 aging of marked tobacco products;

(C) shipment of tobacco products outside the United States for unauthorized reshipment into the United States; and

(D) the use of force or violence in the course of trafficking in tobacco products;

(2) consider amending the sentencing guidelines and policy statements to provide enhanced sentences for any defendant, who, in the course of an offense described in subsection (a)—

(A) encourages, or acts in willful ignorance of encouragement of, sales of tobacco products to any person under age 18;

(B) is or acts in cooperation with an officer or managing or supervising official of any tobacco manufacturer;

(C) is an official of any government or recruits or makes any bribe or other illegal payment to any official of any government, including any tribal government or any foreign government;

(D) uses sophisticated means to impede discovery of the existence or extent of the offense;

(E) is a corporation engaged in manufacture of tobacco products;

(F) uses a firearm or other dangerous weapon; or

(G) recruits or cooperates with or acts in willful ignorance of the activities of a person who is known to have a significant prior criminal record;

(3) amend the sentencing guidelines to provide a separate and enhanced schedule of fines for tobacco offenses;

(4) assure reasonable consistency with other relevant directives and with other guidelines;

(5) avoid duplicative punishment for substantially the same offense or offender characteristic;

(6) account for any aggravating or mitigating circumstances that might justify exceptions;

(7) ensure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code; and

(8) take any other action the Commission considers necessary to carry out this section.

tobacco product manufacturer, importer, distributor, or retailer at the same time.

"(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.".

SEC. 304. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 303 of this title, is further amended by adding at the end the following:

"(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.".

SEC. 305. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 301 of this title, is further amended by adding at the end the following:

"(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

"(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

"(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).".

Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents

SEC. 311. REGULATION REQUIREMENT.

(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of this Act, the Secretary, through the Commissioner of the Food and Drug Administration, shall promulgate regulations under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that meet the requirements of subsection (b) of this section.

(b) CONTENTS OF RULES.—The rules promulgated under subsection (a) of this section shall require the testing, reporting, and disclosure of tobacco product smoke constituents and ingredients that the Secretary determines should be disclosed to the public in order to protect the public health. Such constituents shall include tar, nicotine, carbon monoxide, and such other smoke constituents or ingredients as the Secretary may determine to be appropriate. The rule may require that tobacco product manufacturers, packagers, or importers make such disclosures relating to tar and nicotine through labels or advertising, and make such disclosures regarding other smoke constituents or ingredients as the Secretary determines are necessary to protect the public health.

(c) AUTHORITY.—The Food and Drug Administration shall have authority to conduct or to require the testing, reporting, or disclosure of tobacco product smoke constituents.

TITLE IV—NATIONAL TOBACCO TRUST FUND

SEC. 401. ESTABLISHMENT OF TRUST FUND.

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

(b) TRANSFERS TO NATIONAL TOBACCO TRUST FUND.—There shall be credited to the trust fund the net revenues resulting from the following amounts:

(1) Amounts paid under section 402.

(2) Amounts equal to the fines or penalties paid under section 402, 403, or 405, including interest thereon.

(3) Amounts equal to penalties paid under section 202, including interest thereon.

(c) NET REVENUES.—For purposes of subsection (b), the term "net revenues" means the amount estimated by the Secretary of the Treasury based on the excess of—

(1) the amounts received in the Treasury under subsection (b), over

(2) the decrease in the taxes imposed by chapter 1 and chapter 52 of the Internal Revenue Code of 1986, and other offsets, resulting from the amounts received under subsection (b).

(d) EXPENDITURES FROM THE TRUST FUND.—Amounts in the Trust Fund shall be available in each fiscal year, as provided in appropriation Acts. The authority to allocate net revenues as provided in this title and to obligate any amounts so allocated is contingent upon actual receipt of net revenues.

(e) BUDGETARY TREATMENT.—The amount of net receipts in excess of that amount which is required to offset the direct spending in this Act under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) shall be available exclusively to offset the appropriations required to fund the authorizations of appropriations in this Act (including the amendments made by this Act), and the amount of such appropriations shall not be included in the estimates required under section 251 of that Act (2 U.S.C. 901).

(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 98 of such Code, except that, for purposes of section 9602(b)(3), any interest or proceeds shall be covered into the Treasury as miscellaneous receipts.

SEC. 402. PAYMENTS BY INDUSTRY.

(a) INITIAL PAYMENT.—

(1) CERTAIN TOBACCO PRODUCT MANUFACTURERS.—The following participating tobacco product manufacturers, subject to the provisions of title XIV, shall deposit into the National Tobacco Trust Fund an aggregate payment of $10,000,000,000, apportioned as follows:

(A) Philip Morris Incorporated—65.8 percent.

(B) Brown and Williamson Tobacco Corporation—17.3 percent.

(C) Lorillard Tobacco Company—7.1 percent.

(D) R.J. Reynolds Tobacco Company—6.6 percent.

(E) United States Tobacco Company—3.2 percent.

(2) NO CONTRIBUTION FROM OTHER TOBACCO PRODUCT MANUFACTURERS.—No other tobacco product manufacturer shall be required to contribute to the payment required by this subsection.

(3) PAYMENT DATE; INTEREST.—Each tobacco product manufacturer required to make a payment under paragraph (1) of this subsection shall make such payment within 30 days after the date of compliance with this Act and shall owe interest on such payment at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the date of enactment of this Act, for payments made after the required payment date.

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in section 403:

(1) year 1—$14,400,000,000.
(2) year 2—$15,400,000,000.
(3) year 3—$17,700,000,000.
(4) year 4—$21,400,000,000.
(5) year 5—$23,600,000,000.
(6) year 6 and thereafter—the adjusted applicable base amount under section 403.

(c) PAYMENT SCHEDULE; RECONCILIATION.—

(1) ESTIMATED PAYMENTS.—Deposits toward the annual payment liability for each calendar year under subsection (d)(2) shall be made in 3 equal installments due on March 1st, on June 1st, and on August 1st of each year. Each installment shall be equal to one-third of the estimated annual payment liability for that calendar year. Deposits of installments paid after the due date shall accrue interest at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date.

(2) RECONCILIATION.—If the liability for a calendar year under subsection (d)(2) exceeds the deposits made during that calendar year, the manufacturer shall pay the unpaid liability on March 1st of the succeeding calendar year, along with the first deposit for that succeeding year. If the deposits during a calendar year exceed the liability for the calendar year under subsection (d)(2), the manufacturer shall subtract the amount of the excess deposits from its deposit on March 1st of the succeeding calendar year.

(d) APPORTIONMENT OF ANNUAL PAYMENT.—

(1) IN GENERAL.—Each tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). The annual payment is the obligation and responsibility of only those tobacco product manufacturers and their affiliates that directly sell tobacco

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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) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the calendar year. One month after the end of the calendar year, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

(3) CALCULATION OF TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a tobacco product manufacturer shall be equal to that manufacturer's share of adjusted units, taking into account the manufacturer's total production of such units sold in the domestic market. A tobacco product manufacturer's share of adjusted units shall be determined as follows:

(A) UNITS.—A tobacco product manufacturer's number of units shall be determined by counting each—

(i) pack of 20 cigarettes as 1 adjusted unit;

(ii) 1.2 ounces of moist snuff as 0.75 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.35 adjusted units.

(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a smokeless tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

(C) ADJUSTED UNITS DETERMINED ON TOTAL DOMESTIC PRODUCTION.—For purposes of determining a manufacturer's number of adjusted units under subparagraph (B), a manufacturer's total production of units, whether intended for domestic consumption or export, shall be taken into account.

(D) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a tobacco product manufacturer has more than 200 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

(E) SMOKELESS EQUIVALENCY STUDY.—Not later than January 1, 2003, the Secretary shall submit to the Congress a report detailing the extent to which youths are substituting smokeless tobacco products for cigarettes. If the Secretary determines that significant substitution is occurring, the Secretary shall include in the report recommendations to address substitution, including consideration of modification of the provisions of subparagraph (A).

(e) COMPUTATIONS.—The determinations required by subsection (d) shall be made and certified by the Secretary of Treasury. The parties shall promptly provide the Treasury Department with information sufficient for it to make such determinations.

(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

(1) EXEMPTION.—A manufacturer described in paragraph (3) is exempt from the payments required by subsection (b).

(2) LIMITATION.—Paragraph (1) applies only to assessments on cigarettes to the extent that those cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed to consumers in any calendar year.

(3) TOBACCO PRODUCT MANUFACTURERS TO WHICH SUBSECTION APPLIES.—A tobacco product manufacturer is described in this paragraph if it—

(A) resolved tobacco-related civil actions with more than 25 States before January 1, 1998, through written settlement agreements signed by the attorneys general (or the equivalent chief legal officer if there is no office of attorney general) of those States; and

(B) provides to all other States, not later than December 31, 1998, the opportunity to enter into written settlement agreements that—

(i) are substantially similar to the agreements entered into with those 25 States; and

(ii) provide the other States with annual payment terms that are equivalent to the most favorable annual payment terms of its written settlement agreements with those 25 States.

SEC. 403. ADJUSTMENTS.

The applicable base amount under section 402(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

(1) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—Beginning with the sixth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 402(b)(5) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the annual increase in the CPI, adjusted (for calendar year 2002 and later years) by the volume adjustment under paragraph (2).

(B) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(C) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(2) VOLUME ADJUSTMENT.—Beginning with calendar year 2002, the applicable base amount (as adjusted for inflation under paragraph (1)) shall be adjusted for changes in volume of domestic sales by multiplying the applicable base amount by the ratio of the actual volume for the calendar year to the base volume. For purposes of this paragraph, the term "base volume" means 80 percent of the number of units of taxable domestic removals and taxed imports of cigarettes in calendar year 1997, as reported to the Secretary of the Treasury. For purposes of this subsection, the term "actual volume" means the number of adjusted unites as defined in section 402(d)(3)(A).

SEC. 404. PAYMENTS TO BE PASSED THROUGH TO CONSUMERS.

Each tobacco product manufacturer shall use its best efforts to adjust the price at which it sells each unit of tobacco products in the domestic market or to an importer for resale in the domestic market by an amount sufficient to pass through to each purchaser on a per-unit basis an equal share of the annual payments to be made by such tobacco product manufacturer under this Act for the year in which the sale occurs.

SEC. 405. TAX TREATMENT OF PAYMENTS.

All payments made under section 402 are ordinary and necessary business expenses for purposes of chapter 1 of the Internal Revenue Code of 1986 for the year in which such payments are made, and no part thereof is either in settlement of an actual or potential liability for a fine or penalty (civil or criminal) or the cost of a tangible or intangible asset or other future benefit.

SEC. 406. ENFORCEMENT FOR NONPAYMENT.

(a) PENALTY.—Any tobacco product manufacturer that fails to make any payment required under section 402 or 404 within 60 days after the date on which such fee is due is liable for a civil penalty computed on the unpaid balance at a rate of prime plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date, during the period the payment remains unmade.

(b) NONCOMPLIANCE PERIOD.—For purposes of this section, the term "noncompliance period" means, with respect to any failure to make a payment required under section 402 or 404, the period—

(1) beginning on the due date for such payment; and

(2) ending on the date on which such payment is paid in full.

(c) LIMITATIONS.—

(1) IN GENERAL.—No penalty shall be imposed by subsection (a) on any failure to make a payment under section 402 during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

(2) CORRECTIONS.—No penalty shall be imposed under subsection (a) on any failure to make a payment under section 402 if—

(A) such failure was due to reasonable cause and not to willful neglect; and

(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

(3) WAIVER.—In the case of any failure to make a payment under section 402 that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed under subsection (a) to the extent that the Secretary determines that the payment of such penalty would be excessive relative to the failure involved.

Subtitle B—General Spending Provisions

SEC. 421. ALLOCATION ACCOUNTS.

(a) STATE LITIGATION SETTLEMENT ACCOUNT.—

(1) IN GENERAL.—There is established within the Trust Fund a separate account, to be known as the State Litigation Settlement Account. Of the net revenues credited to the Trust Fund under section 401(b)(1) for each fiscal year, 40 percent of the amounts designated for allocation under the settlement payments shall be allocated to this account. Such amounts shall be reduced by the additional estimated Federal expenditures that will be incurred as a result of State expenditures under section 452, which amounts shall be transferred to the miscellaneous receipts of the Treasury. If, after 10 years, the estimated 25-year total amount projected to received in this account will be different than amount than $196,500,000,000, then beginning with the eleventh year the 40 percent share will be adjusted as necessary, to a percentage not in excess of 50 percent and not less than 30 percent, to achieve that 25-year total amount.

(2) APPROPRIATION.—Amounts so calculated are hereby appropriated and available until expended and shall be available to States for grants authorized under this Act.

(3) DISTRIBUTION FORMULA.—The Secretary of the Treasury shall consult with the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislators on a formula for the distribution of amounts in the State Litigation Settlement Account and report to the Congress within 90 days after the date of enactment of this Act with recommendations for implementing a distribution formula.

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(4) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate, consistent with the other provisions of this Act.

(5) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(b) PUBLIC HEALTH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Public Health Account. Twenty-two percent of the net revenues credited to the trust fund under section 401(b)(1) and all the net revenues credited to the trust fund under section 401(b)(3) shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.— Amounts in the Public Health Account shall be available to the extent and only in the amounts provided in advance in appropriations Acts, to remain available until expended, only for the purposes of:

(A) CESSATION AND OTHER TREATMENTS.—Of the total amounts allocated to this account, not less than 25 percent, but not more than 35 percent are to be used to carry out smoking cessation activities under part D of title XIX of the Public Health Service Act, as added by title II of this Act.

(B) INDIAN HEALTH SERVICE.—Of the total amounts allocated to this account, not less than 3 percent, but not more than 7 percent are to be used to carry out activities under section 453.

(C) EDUCATION AND PREVENTION.—Of the total amounts allocated to this account, not less than 50 percent, but not more than 65 percent are to be used to carry out—

(i) counter-advertising activities under section 1982 of the Public Health Service Act as amended by this Act;

(ii) smoking prevention activities under section 223;

(iii) surveys under section 1991C of the Public Health Service Act, as added by this Act (but, in no fiscal year may the amounts used to carry out such surveys be less than 10 percent of the amounts available under this subsection); and

(iv) international activities under section 1132.

(D) ENFORCEMENT.—Of the total amounts allocated to this account, not less than 17.5 percent nor more than 22.5 percent are to be used to carry out the following:

(i) Food and Drug Administration activities.

(I) The Food and Drug Administration shall receive not less than 15 percent of the funds provided in subparagraph (D) in the first fiscal year beginning after the date of enactment of this Act, 35 percent of such funds in the second year beginning after the date of enactment, and 50 percent of such funds for each fiscal year beginning after the date of enactment, as reimbursements for the costs incurred by the Food and Drug Administration in implementing and enforcing requirements relating to tobacco products.

(II) No expenditures shall be made under subparagraph (D) during any fiscal year in which the annual amount appropriated for the Food and Drug Administration is less than the amount so appropriated for the prior fiscal year.

(ii) State retail licensing activities under section 251.

(iii) Anti-Smuggling activities under section 1141.

(c) HEALTH AND HEALTH-RELATED RESEARCH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Health and Health-Related Research Account. Of the net revenues credited to the trust fund under section 401(b)(1), 22 percent shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.— Amounts in the Health and Health-Related Research Account shall be available to the extent and in the amounts provided in advance in appropriations acts, to remain available until expended, only for the following purposes:

(A) $750,000 shall be made vailable in fiscal year 1999 for the study to be conducted under section 1991 of the Public Health Service Act.

(B) National Institutes of Health Research under section 1991D of the Public Health Service Act, as added by this Act. Of the total amounts allocated to this account, not less than 75 percent, but not more than 87 percent shall be used for this purpose.

(C) Centers for Disease Control under section 1991C of the Public Health Service Act, as added by this Act, and Agency for Health Care Policy and Research under section 1991E of the Public Health Service Act, as added by this Act, authorized under sections 2803 of that Act, as so added. Of the total amounts allocated to this account, not less than 12 percent, but not more than 18 percent shall be used for this purpose.

(D) National Science Foundation Research under section 454. Of the total amounts allocated to this account, not less than 1 percent, but not more than 1 percent shall be used for this purpose.

(E) Cancer Clinical Trials under section 455. Of the total amounts allocated to this account, $750,000,000 shall be used for the first 3 fiscal years for this purpose.

(d) FARMERS ASSISTANCE ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Farmers Assistance Account. Of the net revenues credited to the trust fund under section 401(b)(1) in each fiscal year—

(A) 16 percent shall be allocated to this account for the first 10 years after the date of enactment of this Act; and

(B) 4 percent shall be allocated to this account for each subsequent year until the account has received a total of $28,500,000,000.

(2) APPROPRIATION.—Amounts allocated to this account are hereby appropriated and shall be available until expended for the purposes of section 1012.

(e) MEDICARE PRESERVATION ACCOUNT.— There is established within the trust fund a separate account, to be known as the Medicare Preservation Account. If, in any year, the net amounts credited to the trust fund for payments under section 402(b) are greater than the net revenues originally estimated under section 401(b), the amount of any such excess shall be credited to the Medicare Preservation Account. Beginning in the eleventh year beginning after the date of enactment of this Act, 12 percent of the net revenues credited to the trust fund under seciton 401(b)(1) shall be allocated to this account. Funds credited to this account shall be transferred to the Medicare Hospital Insurance Trust Fund.

SEC. 452. GRANTS TO STATES.

(a) AMOUNTS.—From the amount made available under section 402(a) for each fiscal year, each State shall receive a grant on a quarterly basis according to a formula.

(b) USE OF FUNDS.—

(1) UNRESTRICTED FUNDS.—A State may use funds, not to exceed 50 percent of the amount received under this section in a fiscal year, for any activities determined appropriate by the State.

(2) RESTRICTED FUNDS.—A State shall use not less than 50 percent of the amount received under this section in a fiscal year to carry out additional activities or provide additional services under—

(A) the State program under the maternal and child health services block grant under title V of the Social Security Act (42 U.S.C. 701 et seq.);

(B) funding for child care under section 418 of the Social Security Act, notwithstanding subsection (b)(2) of that section;

(C) federally funded child welfare and abuse programs under title IV-B of the Social Security Act;

(D) programs administered within the State under the authority of the Substance Abuse and Mental Health Services Administration under title XIX, part B of the Public Health Service Act;

(E) Safe and Drug-Free Schools Program under title IV, part A, of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7111 et seq.);

(F) the Department of Education's Dwight D. Eisenhower Professional Development program under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.); and

(G) The State Children's Health Insurance Program authorized under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.), provided that the amount expended on this program does not exceed 6 percent of the total amount of restricted funds available to the State each fiscal year.

(c) NO SUBSTITUTION OF SPENDING.— Amounts referred to in subsection (b)(2) shall be used to supplement and not supplant other Federal, State, or local funds provided for any of the programs described in subparagraphs (A) through (G) of subsection (b)(2). Restricted funds, except as provided for in subsection (b)(2)(G), shall not be used as State matching funds. Amounts provided to the State under any of the provisions of law referred to in such subparagraph shall not be reduced solely as a result of the availability of funds under this section.

(d) FEDERAL-STATE MATCH RATES.—Current (1998) matching requirements apply to each program listed under subsection (b)(2), except for the program described under subsection (b)(2)(B). For the program described under subsection (b)(2)(B), after an individual State has expended resources sufficient to receive its full Federal amount under section 418(a)(2)(B) of the Social Security Act (subject to the matching requirements in section 418(a)(2)(C) of such Act), the Federal share of expenditures shall be 80 percent.

(e) MAINTENANCE OF EFFORT.—To receive funds under this subsection, States must demonstrate a maintenance of effort. This maintenance of effort is defined as the sum of—

(1) an amount equal to 95 percent of Federal fiscal year 1997 State spending on the programs under subsections (b)(2)(B), (c), and (d); and

(2) an amount equal to the product of the amount described in paragraph (1) and—

(A) for fiscal year 1999, the lower of—

(i) general inflation as measured by the consumer price index for the previous year; or

(ii) the annual growth in the Federal appropriation for the program in the previous fiscal year; and

(B) for subsequent fiscal years, the lower of—

(i) the cumulative general inflation as measured by the consumer price index for the period between 1997 and the previous year; or

(ii) the cumulative growth in the Federal appropriation for the program for the period between fiscal year 1997 and the previous fiscal year.

06/01/98 11:10 GENERAL COUNSEL → DOMESTIC POLICY 010

Tob - set - new leg -
McCain - amendments

Leahy Fourth Revised Law Enforcement Funding

June 8, 1998

The floor for the law enforcement band within the Public Health Account will be increased from 17.5% to 21.5%. This will produce an extra $100 million per year. The new numbers will be allocated as set forth below.

Year	Total	FDA %	FDA $	State LE Grants	Unreserved
1	$800m	25%	$200m	$300m	$300m
2	$600m	30%	$180m	$100m	$320m
3	$700m	40%	$280m	$100m	$320m
4	$700m	40%	$280m	$100m	$320m
5	$700m	40%	$280m	$100m	$320m
Total	$3.5b		$1.22b	$700m	$1.58b

These are <u>minimum</u> amounts for each year, and may be spent over 3 years.

Minimum amounts for FDA will be stated in percentages for each year. Minimum amounts for state and local law enforcement grants will be stated in dollar terms each year. The grants will be administered by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of HHS.

This provides an extra $100 million for FDA in the first year, and $20 million less in the out years than originally requested. Because the funds can be spent over 3 years, the result is a real increase of $20 million above what the McCain bill provides for FDA over 5 years.

No minimum amount has been specified in the McCain bill for the federal anti-smuggling activity or for state licensing grants. These would fall into the unreserved funds and would be subject to appropriations, just as in the McCain bill. The unreserved funds available exceed the amounts available for these purposes under the McCain bill after the first year.

Tob - set - new legis -
McCain - amendments

JOSHUA
GOTBAUM
06/14/98 03:34:27 PM

Record Type: Non-Record

To: Cynthia A. Rice/OPD/EOP

cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Richard J. Turman/OMB/EOP
Subject: Points for "Actively Oppose" Tobacco Amendments

Attached per your request are OMB staff points. If we decide that one pagers are necessary, then they can be reformatted.

---------- Forwarded by Joshua Gotbaum/OMB/EOP on 06/14/98 03:31 PM ----------

Attached are talking points that cover most of the amendments that we identified as "actively oppose" -- only two dealing with FDA (Ashcroft 4 and Hatch 3) are not included and we expect these will be handled adequately by HHS.

AMNDS1.W

Ashcroft 1 (No. 2544) -- Strikes Prescribed Activities for States

Summary of Amendment: Strikes sections 452(b), 452(c) and 452(d), which require States to spend funds from the State Litigation Settlement Account in the following manner:

(1) 50% on unrestricted uses.

(2) 50% on restricted uses including child care, State Children's Health Insurance Programs (CHIP), MCH Block Grant, SAMHSA activities, Safe and Drug Free Schools and Eisenhower Education grants.

Why the Administration Opposes the Amendment: The Administration negotiated an agreement with the National Governor's Association which established the menu of restricted activities above. This amendment would delete this structure and allow States to spend their funds in any manner that they choose. Given that the Budget proposed to use tobacco receipts to support some of the restricted activities above (e.g. child care), the Administration would prefer to direct some of the state funds to priority areas.

It is not clear if this amendment would be adopted or even offered given that the Senate has approved the "Kerry and others" amendment that requires States to spend at least 50% of their restricted funds on the Child Care and Development Block Grant.

Bingaman 1 (No. 2525) -- Establish a Separate Veterans Compensation Account within the Tobacco Trust Fund

Summary of Amendment: The amendment would create a separate Veterans Compensation Account with the Tobacco Trust Fund providing funding of $10 billion over 5 years for veterans' disability payments for tobacco-related illnesses.

Why the Administration opposes the amendment.

-- This amendment would authorize payments to veterans who currently are not authorized to receive these benefits. (It reverses the recently enacted [TEA-21] VA tobacco proposal.)

-- While the Administration strongly supports veterans compensation, these are not traditional VA benefits.

-- There is no question that we should compensate veterans for smoking-related illnesses that became manifest *during* military service. However, awarding compensation for tobacco-related illnesses acquired *after* military service -- frequently decades later -- and based *solely* on claims of nicotine addiction beginning during service -- goes well beyond the purposes of the veterans disability program.

-- While veterans were provided with discounted or free cigarettes, 64% of veterans do not smoke currently. It seems inappropriate to compensate those that do with a program developed for those who became disabled in service to our nation.

--The payment of these tobacco claims threatens to put a severe strain on the system. VA surveys project some 540,000 claims for tobacco benefits could be filed. The time to process a claim could more than double, and the total number of backlogged claims in the system would grow from less than a half million (currently) to over 2 million in FY 2000, *affecting all veteran claims regardless of the cause.*

--The amendment is inconsistent with the agreed to allocations of the tobacco revenues from the trust fund.

-- This $10 billion would be in addition to the $3 billion over 5 years provided for VA medical care by another amendment. (Note that the VA medical care funding also was not within the Administration's agreed to allocations of the tobacco revenues.)

Craig 1 (No. 2508) -- Increase Funds Available to States

Summary of Amendment: Strikes section 451(a) that establishes the State Litigation Settlement Account and replaces it with language that does the following:

(1) Increases the percentage reserved for the State Litigation Settlement Account from 40% to 62%.

(2) Requires that the 62% figure above be adjusted accordingly (beginning in year 11) if the projected 25-year total for states is different that $340.2 billion. This projected 25-year floor in the current bill is $196.5 billion.

(3) Nullifies section 452(b) of the current bill that requires States to use 50% of their funds on a menu of "restricted" activities (e.g. child care, CHIP). Allows States to use their funds "as the State determines appropriate."

Why the Administration Opposes the Amendment: By increasing funding for States, this amendment would significantly reduce funding for other public health, research and farmer activities that the Administration supports. It would also nullify the requirement that States spend at least 50% of their funds on a menu of programs that the Administration supports.

Craig 2 (No. 2509) -- Adjustment for Indirect Federal Spending Effects and Compensation for State Tax Losses

Summary of Amendment: The Craig amendment would add two provisions to S. 1415 to adjust for indirect Federal and State budget impacts from the industry payments mandated by the bill. The first provision would require that net revenues deposited in the National Tobacco Trust Fund be reduced by "the increase in direct and indirect Federal spending as a result of this act."

The second new provision would require that State payments be increased. Specifically, the provision requires an increase equal to the decrease in the amount of revenue lost by a States as a result of decreased tobacco demand.

Why the Administration opposes the amendment: The first provision would paradoxically remove revenue from the tobacco trust fund that is necessary to fund the direct spending in that fund for States and farm assistance. This provision specifies that the indirect Federal spending effects include the effect on outlays of increased COLAs resulting from the CPI impact of higher tobacco prices. Such effects are not scored by either CBO or JCT, because they only account for one element of the economic impacts resulting from the industry payments. Other effects include the shift in demand to other products, consequent changes in the prices for those products, and income shifts throughout the economy. Such effects are beyond the capability of estimators to quantify reasonably.

The second new provision requires increased State payments to account for reduced tobacco demand. Amounts to be received by States under section 451 have already been negotiated. These increased State payments would reduce the amount of funding available for other priorities in the bill, including public health and health research. The provision would also be subject to considerable variation across States, as well as gaming by the States, since it is affected by each State's tobacco excise tax rate. Finally, the amendment would require that the JCT make the estimates of the two provisions. This requirement raises constitutional issues, since it would place a legislative branch agency in the role of making executive determinations.

Hatch 1 (No. 2535) -- Banning a Class of Products or Nicotine

Summary of Amendment: Requires that any FDA regulation banning a class of tobacco products or eliminating nicotine cannot go into effect until Congress first passes a law.

Why the Administration Opposes the Amendment: The limits placed on an agency's ability to regulate would be a significant intrusion into Executive Branch policymaking. Congress already has the ability under the Congressional Review Act (CRA), as part of the Small Business Reform Act (SBREFA), to review agency regulations and to repeal rules through expedited procedures. The amendment may raise Constitutional concerns but the Justice Department has not yet been asked to review this issue.

Roth 1 (No. 2512) -- Multiple Amendments to Medicaid and State Settlement Litigation Account

Summary of Amendment: This multi-faceted amendment does the following:

(1) Makes technical changes to the language in the current McCain bill that establishes a mandatory smoking cessation drug benefit under Medicaid.

(2) Deletes language in the current McCain bill that would reduce the amount of funds reserved for the State Litigation Settlement by the "estimated Federal that will be incurred as a result of State expenditures under section 452." Section 452 amends the Medicaid statute to give States new options to enhance outreach and enrollment of children in the Medicaid program, which could result in additional Federal expenditures (estimated by CBO to be $400 million over 5 years).

(3) Strikes section 451(a)(3) that requires the Secretary of Treasury to consult with various state advocacy groups and report to Congress within 90 days after enactment with recommendations for implementing a state distribution formula.

(4) Inserts into the bill an explicit distribution formula with individual state percentages (including territories.)

(5) Allows States to use the amounts generated by this formula "as the State determines appropriate." This would likely overide the 50% restricted uses provision in section 452(b).

(6) Establishes minimum annual amounts for Settlement States (e.g. Florida, Minnesota, Mississippi and Texas). These States must at least get the amount that would receive under their own individual settlements. As such, the amounts reserved for the other non-settlement States "shall be ratably reduced" by the excess for the 4 Settlement states.

(7) Requires HHS to waive current law provisions related to the treatment of overpayments (i.e. provisions that allow HHS to reclaim the Federal share of State proceeds from tobacco litigation settlements) if the State certifies that they will not use tobacco funds from this bill or any other settlement in the Medicaid program. This is likely an attempt to prevent States from putting up for Federal match the proceeds from this bill or any other State settlement with the tobacco industry. Given that State funds are fungible, it is unlikely that this provision would have much of a budgetary impact.

(8) Strikes all of Section 452 which requires States to use 50% of their funds on a restricted menu of programs (e.g. Child Care) and gives states new options to

enhance outreach and enrollment of children in the Medicaid program.

Why the Administration Opposes the Amendment: The Administration would not have serious concerns with provisions 1,3,4,6, and 7 above, but would strongly oppose provisions 5 and 8 above. These provisions (5 & 8) would free States from spending their funds on the restricted menu of activities in the current bill and would preclude them from expanding Medicaid outreach (a policy that was included in the President's Budget.) The Administration would also have some concerns with provision 2 since this would alter the State spending agreement that DPC/OMB negotiated with the NGA.

Roth 4 (No. 2515) -- Privatization of Medicaid Eligibility Services

Summary of Amendment: Allows States to contract with private entities to perform eligibility determinations for Medicaid.

Why the Administration Opposes the Amendment: -- The Administration has strongly opposed this provision in the past when proposed in waivers by States or by Congress during the BBA. Currently, Medicaid provide the States with the opportunity to automate and re-engineer business processes, as well as to use contract staff to perform a number of functions -- including the design, development and operation of large information systems. While certain program functions, such as computer systems, can now be contracted out to private entities, the certification of eligibility for benefits and related operations (such as obtaining and verifying information about income and other eligibility factors) should remain public functions.

Roth 5 (No. 2516) -- Deduction for Health Insurance Costs

Summary of Amendment: Provides a deduction for health insurance costs for individuals not eligible to participate in employer-subsidized health plans.

Why the Administration Opposes the Amendment: The Administration opposes this provision as only 1.25% of the currently uninsured are likely to be newly covered as a result of this provision. About half of the uninsured have incomes too low to even pay any taxes and so would not benefit from this. In addition, this provision may reduce the relative tax advantage of employer-sponsored health insurance compared to individually purchased health insurance. This could erode the incentive for employers to provide health insurance.

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McCain - amendments

GUIDE TO ACCEPTING AMENDMENTS BY UC (June 15, 1998)*

Amendment	Oppose	Neutral	Support
Ashcroft 1 (2544) **Strike prescribed activities for states**	X		
Ashcroft 2 (2545) **Strike funding trigger for NIH**	X		
Ashcroft 3 (2546) **Strike the funding trigger for CDC**	X		
Ashcroft 4 (2547) **Strike the funding trigger for FDA**	X		
Ashcroft 5 (2548) **Strike international tobacco control awareness**	X		
Ashcroft 6 (2549) **Strike authorization for international programs**	X		
Ashcroft 7 (2550) **Strike the tax deductibility of tobacco company payments**	X		
Ashcroft 8 (2551) **To authorize state spending against illegal drugs**	X		
Ashcroft 9 (2552) **Increase penalties for trafficking methamphetamine**	X		
Ashcroft 10 (2553) **Modify state law provisions regarding sale of tobacco products to minors**	X		
Bingaman 1 (2525) **To provide funding for a VA Compensation Account**	X		
Bond 1 (2531) **Sanctions for underage possession of tobacco**		X	
Bond 2 (2532) **Specifies $100 million of retail licensing block grant for States and local law enforcement agencies**	X		
Chafee 1 (2439) **To prohibit smoking on airline flights**			X
Conrad 1 **Changes penalty for non-compliance with State retail and licensing laws to percentage of unrestricted state funds**	X		
Conrad 2 **Increases funds for counter-advertising programs to 50% of education and prevention funds**		X	
Conrad 3 **Permit States to enact laws more stringent than FDA-related provisions of this Act**			X
Conrad 4 **Permit sting operations to ensure compliance with State retail licensing laws**			X

* This list includes only some of the amendments filed.

GUIDE TO ACCEPTING AMENDMENTS BY UC (June 15, 1998)*

Amendment	Oppose	Neutral	Support
Conrad 5 **Permits follow-up inspections of certain tobacco sales & distributions outlets**			X
Conrad 6 **Changes penalty for noncompliance with State retail and licensing laws to percentage of unrestricted state funds**	X		
Conrad 7 **Modify definition of addiction and dependence claim**	X		
Conrad 8 **Clarifies definition of tobacco claim**	X		
Conrad 9 (2529) **Authorizes $500 million for counter-advertising**		X	
Conrad 10 (2528) **Changes penalty for noncompliance with State retail and licensing laws to 40% of certain PHS Act funds**	X		
Conrad 11 (2527) **Changes penalty for noncompliance with State retail and licensing laws to 50% of State block grant**	X		
Craig 1 (2508) **Increase funds available to States**	X		
Craig 2 (2509) **Limit trust fund to take account of added federal spending and reimburse states for lost revenue**	X		
Dodd (2540) **Floor for child care**		X	
Domenici 1 (2510) **R&D tax credits**	X		
Domenici 2 (2511) **Dedicate revenues to Medicare trust fund after fy2008**	X		
Durbin 1 (2522) **Clarify advertising for mass transit vehicles**			X
Durbin 2 (2521) **substitute provisions for reductions in under-age usage**		X	
Durbin 3 (2523) **Clarify definition of tobacco products**			X
Durbin 4 (2524) **clarify application to legislative branch for certain for certain tobacco act requirements**		X	
Hatch 1 (2535) **Banning a class of products or elimination of nicotine**	X		
Hatch 2 (2536) **Modify provisions relating to the rule of the FDA**	X		
Hatch 3 (2537) **Strikes pre-market review of tobacco products**	X		

* This list includes only some of the amendments filed.

GUIDE TO ACCEPTING AMENDMENTS BY UC (June 15, 1998)*

Amendment	Oppose	Neutral	Support
Hatch 4 (2538) **Strike provisions relating to reporting of substantially equivalent products**	X		
Hatch 5 (2539) **Clarify provisions: Requires FDA promulgation of performance standards for tobacco products**	X		
Hutchison 1 (2558) **Maintain State funding for those States that have separate settlements w/ tobacco manufacturers**		X	
Hutchison 2 (2559) **State opt-in with respect to receipt of funds under this Act**	X		
Hutchison 3 (2560) **Funds received under state settlements are not considered as reimbursements for Medicaid expenditures or overpayments**	X		
Hutchison 4 (2561) **Requires that the determination of attorneys fees under this act offset any State liability for attorney fees**		X	
Inouye 1 (2556) **Any required asbestos payment can be taken from Trust fund**		X	
Jeffords 1 (2567) **Funding floor for AHCPR**	X		
Jeffords 2 (2542) **Earmark for research activities at NIH**	X		
Jeffords 3 (2543) **Congressional oversight for public health allocation account activities**		X	
Kennedy 1 (2506) **Non-tax deductibility of industry payments**	X		
Kennedy 2 (2507) **Non-tax deductibility of industry payments: duplicate of Kennedy 1 above.**	X		
Kerrey 1 **Only funds deposited in the tobacco trust fund may be used for activities under the bill**	X		
Kerrey 2 **Requires creation of tobacco scholar program**	X		
Kerrey 3 (2530) **Tobacco farmer transition provisions**	X		
Kerry + Others (2541) **Floor for CCDBG**		X	
Landrieu 1 (2517) **Increase industry payments for participating manufacturers**	X		

* This list includes only some of the amendments filed.

GUIDE TO ACCEPTING AMENDMENTS BY UC (June 15, 1998)*

Amendment	Oppose	Neutral	Support
Landrieu 2 (2518) **Assist individuals suffering from tobacco related illnesses**	X		
Landrieu 3 (2519) **Factors considered in State distribution formula**		X	
Landrieu 4 (2520) **Child-care for federal employees**	X		
Lautenberg/ Smith 1 (2633) **Local government authority relating to protection from health hazards--ETS**			X
Lieberman 1 (2505) **Gives compensatory damage awards priority over punitives within cap**		X	
Lugar 1 (2501) **Treatment of payments to tobacco owners and producers and tobacco dependent states**	X		
Lugar 2 (2502) **Front-loads payments to farmers**	X		
Mack 1 **Clarifies NIH trigger**			X
Mack 2 (2557) **Treatment of state settlement not considered reimbursements for Medicaid**	X		
McCain 1 (2554) **Review of Survey Methodology for look back and other concerns**	X		
Murkowski 1 (2503) **State tobacco excise and sales taxes from Indian tribes**	X		
Murkowski 2 (2504) **Collection of state tobacco excise and sales taxes from Indian Tribes**	X		
Murray 1 (2526) **Include child care providers in definition of public facilities--ETS**		X	
Roth 1 (2512) **Payments to States and Medicaid coverage of smoking cessation agents**	X		
Roth 2 (2513) **Strikes Children's health outreach**	X		
Roth 3 (2514) **Repeal reduction in SSBG block grants for social services**	X		
Roth 4 (2515) **Privatization of eligibility for children under Medicaid**	X		
Roth 5 (2516) **Deduction for health insurance costs**	X		

* This list includes only some of the amendments filed.

GUIDE TO ACCEPTING AMENDMENTS BY UC (June 15, 1998)*

Amendment	Oppose	Neutral	Support
Shelby 1 (2533) **Awards by arbitration panels**		X	
Shelby 2 (2534) **Awards by arbitration panels**		X	
Snowe 1 **Directs portion of funds from lookback surcharges to cessation instead of entire public health account** (With proposed technical amendment, lookback funds would be earmarked for the public health account.)	X		
Snowe 2 **Penalties for minors purchasing and possessing tobacco**	X		
Stevens 1 (2555) **Provisions relating to funding of Indian programs**	X		
Torricelli 1 (2562) **Investigate high rate of cancer in Dover township, NJ**		X	
Torricelli 2 (2563) **Health care for America's children -- presumptive outreach**	X		
Warner 1 (2564) **Strikes dislocated worker provision in LEAF**	X		
Warner 2 (2565) **Strike Title II -- Reductions in underage tobacco use**	X		
Warner 3 (2566) **Strike International provisions: Title XI**	X		

* This list includes only some of the amendments filed.

Kevin B
Thanks

Tob - sec - new leg -
McCain - amendments

Reed Advertising Enforcement Amendment: End Big Tobacco's Efforts to Target Children

The Reed amendment strengthens the McCain bill's advertising restrictions aimed at protecting children by eliminating tax deductibility for advertising expenses *if* a tobacco manufacturer violates the tobacco advertising restrictions promulgated by the Food and Drug Administration. The amendment does not apply to the restrictions in the McCain bill's protocol.

- Advertising is an important factor in youth tobacco use, and restrictions on advertising must be part of any meaningful approach to reducing youth smoking. The tobacco industry's history of marketing to children is well documented. Big Tobacco should not continue to target children, and Congress must provide a strong enforcement mechanism for essential advertising restrictions.

- Currently, taxpayers subsidize tobacco advertising through the advertising deduction to the tune of $2 billion a year, more than forty times the amount spent by the NIH on lung cancer research.

- The amendment provides a sensible approach to enforcement. Under this amendment, *the tobacco industry continues the benefit of tax deductibility of advertising costs as long as its advertising is not targeted to children.*

- The Reed amendment is supported by Dr. C. Everrett Koop, The American Lung Association, the Center for Tobacco-free Kids, the ENACT Coalition and others. Cosponsors include: Senators Boxer, Wyden, Kennedy, Daschle, Durbin, Wellstone, Feinstein, Bingaman and Conrad.

- The Reed amendment is constitutional.
  - It passes the test for restriction on commercial speech (*Central Hudson*).
  - It mirrors other decisions by Congress for funding or use of the tax code. For example: 1) non-profit organizations can't lobby and retain their tax status; 2) legal service attorneys can't bring certain cases and accept government grants.

- Unbelievably, opponents have argued both that Congress cannot restrict tobacco advertising targeted to children and that the Congress has to fund such advertising. Neither is true, and the Reed amendment ensures that taxpayers are not subsidizing tobacco advertising to children.

O:\MAT\MAT98.401 S.L.C.

AMENDMENT NO. ____ Calendar No. ____

Purpose: To disallow tax deductions for advertising, promotional, and marketing expenses relating to tobacco product use unless certain requirements are met.

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

S. 1415

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.

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. REED

Viz:

1 At the appropriate place, insert the following:

2 SEC. ___. DISALLOWANCE OF TAX DEDUCTIONS FOR AD-
3 VERTISING, PROMOTIONAL, AND MARKETING
4 EXPENSES RELATING TO TOBACCO PRODUCT
5 USE UNLESS CERTAIN ADVERTISING RE-
6 QUIREMENTS ARE MET.

7 (a) IN GENERAL.—Part IX of subchapter B of chap-
8 ter 1 of subtitle A of the Internal Revenue Code of 1986

1 (relating to items not deductible) is amended by adding
2 at the end the following:

3 **"SEC. 280I. DISALLOWANCE OF DEDUCTION FOR TOBACCO**
4 **ADVERTISING, PROMOTIONAL, AND MARKET-**
5 **ING EXPENSES UNLESS CERTAIN ADVERTIS-**
6 **ING REQUIREMENTS ARE MET.**

7 "(a) IN GENERAL.—No deduction shall be allowed
8 under this chapter for any taxable year for expenses relat-
9 ing to advertising, promoting, or marketing cigars, ciga-
10 rettes, smokeless tobacco, pipe tobacco, roll-your-own to-
11 bacco, or any similar tobacco product unless the taxpayer
12 maintains compliance during such year with the advertis-
13 ing and marketing provisions of part 897 of title 21, Code
14 of Federal Regulations, that were published in the Federal
15 Register on August 28, 1996.

16 "(b) GENERAL DEFINITIONS.—For purposes of this
17 section, any term used in this section which is also used
18 in section 5702 shall have the same meaning given such
19 term by section 5702.".

20 (b) CONFORMING AMENDMENT.—The table of sec-
21 tions for such part IX is amended by adding after the
22 item relating to section 280H the following:

"Sec. 280I. Disallowance of deduction for tobacco advertising, promotional, and marketing expenses unless certain advertising requirements are met."

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 1998.

Reed amendment

DOJ analysis
- Internal -

1. Proposed Section 3801 would raise substantial constitutional concerns under the First Amendment. Under the unconstitutional conditions doctrine, a provision that prohibited manufacturers from deducting the expenses of lawful tobacco-related advertising but permitted them to deduct the expenses for all other types of lawful advertising would be subject to substantial constitutional challenge as an impermissible, content-based burden on truthful nonmisleading commercial speech. Section 3801 is similarly problematic.

The provision would permit a manufacturer to continue to deduct the expenses of lawful advertising even though individual advertisements violated federal law, unless the advertising concerned tobacco products. In the case of tobacco advertising alone, a violation of federal law would preclude the manufacturer from deducting the expenses of concededly lawful tobacco advertising. For this reason, section 3801 would be subject to substantial constitutional challenge as an impermissible governmental burden on truthful, nonmisleading tobacco advertising because it treats lawful tobacco advertising less favorably than lawful advertising about other products. That is particularly true because the "penalty" on a manufacturer would be imposed even for a single, relatively minor violation.

2. Proposed Section 3801 could be modified to ensure that it would survive constitutional challenge. It could provide that a taxpayer shall be prohibited from deducting the expenses for any tobacco advertisements that themselves violate federal law. This change would ensure that section 3801 could not be challenged as a burden on constitutionally protected commercial speech as it would merely constitute an additional penalty on unlawful advertising.

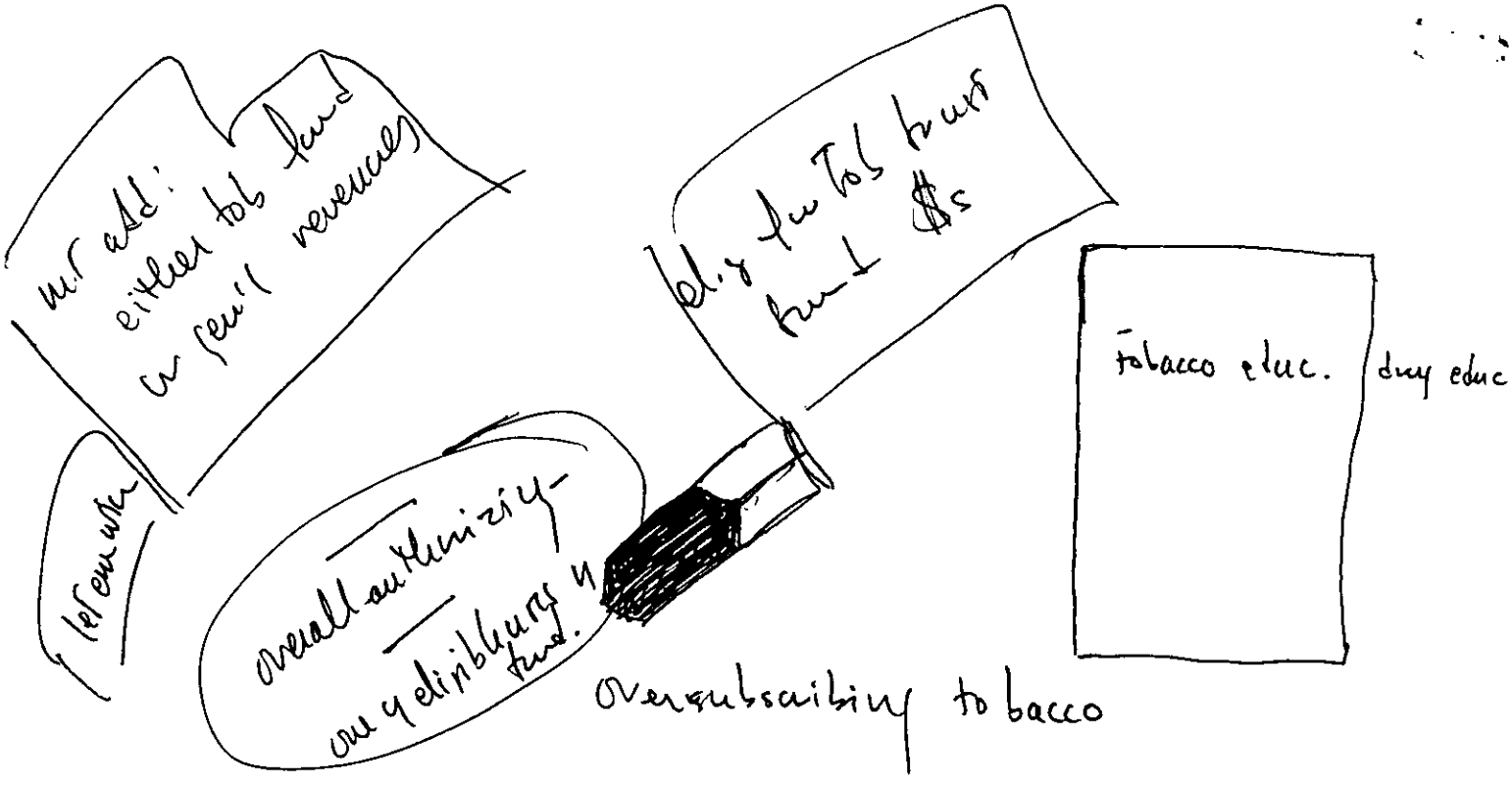
Tob-mt-new leg-McCain-amendments

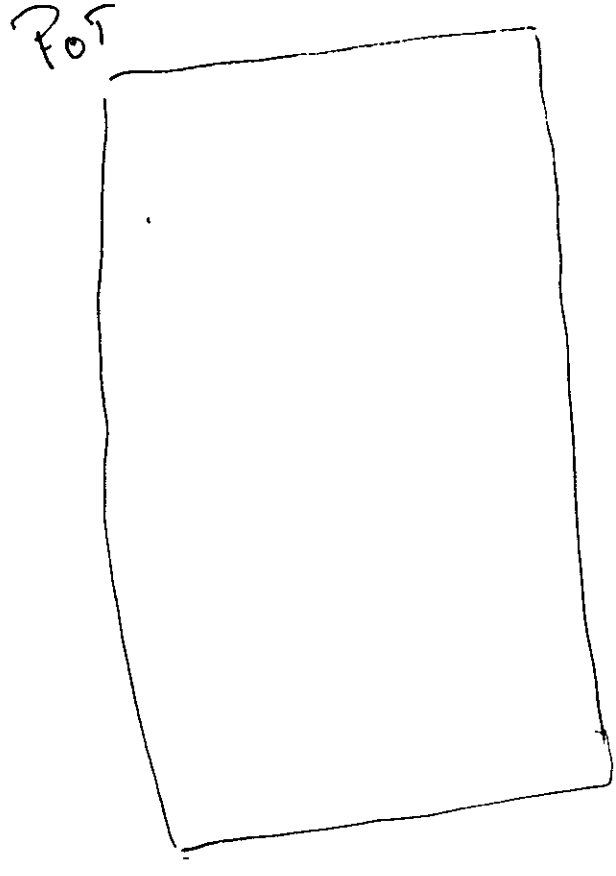
Kerrey Tobacco Scholars Amendment

- Instructs NIH to designate NIH-funded researchers to serve as Tobacco Scholars.
- Each State would be assigned a Tobacco Scholar.
- Tobacco Scholars would be responsible for sharing the results of their tobacco-related research, and research by other scientists, with the general public and the medical community within each State through community-based activities. These educational efforts would focus on research conclusions and their implications for public health.
- These community-based activities can include public forums, educational programs, public service announcements, advertising, television broadcasts and other strategies developed by the Tobacco Scholar and the State.
- The cost of these community-based activities would be included within the NIH allocation from the Health and Health-Related Research Allocation Account.

On p. 133 line 24, insert after the word "grants." the following:
Such technical assistance or training may include dissemination by the Secretary to the state of tobacco-related research funded by the National Institutes of Health for use in the community-based activities described in section

On p. 143 ~~after~~ line 23, after the word "out.", insert the following:
Such activities may include community based activities that disseminate
(insert I)





Chris P
224-
4931

needle exchange
vouchers
unions

1 of the tobacco scholars assigned to States in accord-
2 ance with paragraph (2).
3 "(2) TOBACCO SCHOLARS.—The Director of the
4 National Institutes of Health shall—
5 "(A) designate individuals to serve as to-
6 bacco scholars from among individuals who re-
7 ceive funding through the National Institutes of
8 Health for tobacco-related research; and
9 "(B) assign a tobacco scholar to each
10 State.
11 "(3) COMMUNITY-BASED ACTIVITIES.—For pur-
12 poses of paragraph (1), the term 'community-based
13 activities' includes—
14 "(A) public forums for sharing research by
15 tobacco scholars and other tobacco-related re-
16 search with the medical community within
17 States; and
18 "(B) dissemination of information to the
19 public on tobacco-related research and the
20 health-related implications of the conclusions of
21 such research through means such as public fo-
22 rums, public service announcements, advertise-
23 ments, and television broadcasts.

Insert I

Tob - ser - new legislation - McCain - amendments

AMENDMENT NO. ____ **Calendar No. ___**

Purpose: To limit attorneys' fees.

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

AMENDMENT Nº 2421

To reform and restructured, marketed, and distributed ress the adverse health effects

By FAIRCLOTH

Bill/Res. No. to Modified Committee Substitute to S.1415

3 **Page(s)**

GPO: 1998 35-821 (mac)

AMENDMENT intended to be proposed by Mr. FAIRCLOTH (for himself, Mr. Sessions, and Mr. McConnell)

Viz:

At the appropriate place, insert the following:

SEC. ___. LIMIT ON ATTORNEYS' FEES.

(a) FEE ARRANGEMENTS.—Subsection (f) 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);

(6) retainer agreements; or

(7) other arrangement providing for the payment of attorneys' fees.

(b) REQUIREMENTS.—No award of attorneys' fees under any action to which this Act applies shall be made under this Act until the attorneys involved have—

(1) provided to the Congress a detailed time accounting with respect to the work performed in relation to the legal action involved; 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 the legal action involved.

(c) APPLICATION.—This section shall apply to fees paid or to be paid to attorneys under any arrangement described in subsection (a)—

(1) who acted on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(2) who acted on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(3) who act at some future time on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(4) who act at some future time on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(5) who acted on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(6) who act at some future time on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(7) who acted on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(8) who act at some future time on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(9) who expended efforts that in whole or in part resulted in or created a model for programs in this Act;

(10) who acted on behalf of a defendant in any of the matters set forth in

1 paragraphs (1) through (9) of this subsection; or

2 (11) who act at some future time on behalf of a defendant in any of the matters
3 set forth in paragraphs (1) through (9) of this subsection.

4 (d) REPORT.—

5 (1) Each attorney whose fees for services already rendered are subject to subsection
6 (a) shall, within 60 days of the date of the enactment of this Act, submit to Committees
7 on the Judiciary of the House of Representatives and the Senate a comprehensive record
8 of the time and expenses for which the fees are to be paid. Such record shall be subject
9 to section 1001(a) of title 18, United States Code.

10 (2) Each attorney whose fees for services rendered in the future are subject to
11 subsection (a) shall, within 60 days of the completion of the attorney's services, submit
12 to Committees on the Judiciary of the House of Representatives and the Senate a
13 comprehensive record of the time and expenses for which the fees are to be paid. Such
14 record shall be subject to section 1001(a) of title 18, United States Code.

15 (e) SEVERABILITY.—If any provision of this section or the application of such provision
16 to any person or circumstance is held to be unconstitutional, the remainder of this section and the
17 application of the provisions of such to any person or circumstance shall not be affected thereby.

18 (f) GENERAL LIMITATION.—Notwithstanding any other provision of law, for each hour spent
19 productively and at risk, separate from the reimbursement of actual out-of-pocket expenses as
20 approved by the court in such action, any attorneys' fees or expenses paid to attorneys for matters
21 described in subsection (c) shall not exceed $250 per hour.

Tob - set - new leg - McCain - amendments

O:\BAI\BAI98.B89 S.L.C.

Pending

AMENDMENT NO. ____ Calendar No. ____

Purpose: To modify provisions relating to industry payments.

IN THE Sess.

AMENDMENT Nº 2422

By Kennedy - Others

Bill/Res. No. to Modified Committee Substitute to S.1415

8 Page(s)

GPO: 1996 35-821 (mac)

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prc ... uted,
to ... s, to
red ... and
for

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. KENNEDY (for himself, ~~and~~ Mr. LAUTENBERG, & CONRAD, & Graham)

Viz:

Beginning in section 402, strike subsection (b) and all that follows through section 403(2) and insert the following:

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the participating tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in paragraph (4) and section 403:

1 (1) For year 1—$14,400,000,000;
2 (2) For year 2, an amount equal to the product
3 of $1.00 and the total number of units of tobacco
4 products that were sold in the United States in the
5 previous year.
6 (3) For year 3, an amount equal to the product
7 of $1.50 and the total number of units of tobacco
8 products that were sold in the United States in the
9 previous year.
10 (4) For year 4, and each subsequent year, an
11 amount equal to the amount paid in the prior year,
12 multiplied by a ratio in which the numerator is the
13 number of units of tobacco products sold in the prior
14 year and the denominator is the number of units of
15 tobacco products sold in the year before the prior
16 year, adjusted in accordance with section 403.
17 (c) PAYMENT SCHEDULE; RECONCILIATION.—
18 (1) ESTIMATED PAYMENTS.—Deposits toward
19 the annual payment liability for each calendar year
20 under subsection (d)(2) shall be made in 3 equal in-
21 stallments due on March 1st, on June 1st, and on
22 August 1st of each year. Each installment shall be
23 equal to one-third of the estimated annual payment
24 liability for that calendar year. Deposits of install-
25 ments paid after the due date shall accrue interest

1 at the prime rate plus 10 percent per annum, as
2 published in the Wall Street Journal on the latest
3 publication date on or before the payment date.
4 (2) RECONCILIATION.—If the liability for a cal-
5 endar year under subsection (d)(2) exceeds the de-
6 posits made during that calendar year, the manufac-
7 turer shall pay the unpaid liability on March 1st of
8 the succeeding calendar year, along with the first de-
9 posit for that succeeding year. If the deposits during
10 a calendar year exceed the liability for the calendar
11 year under subsection (d)(2), the manufacturer shall
12 subtract the amount of the excess deposits from its
13 deposit on March 1st of the succeeding calendar
14 year.
15 (d) APPORTIONMENT OF ANNUAL PAYMENT.—
16 (1) IN GENERAL.—Each tobacco product manu-
17 facturer is liable for its share of the applicable base
18 amount payment due each year under subsection
19 (b). The annual payment is the obligation and re-
20 sponsibility of only those tobacco product manufac-
21 turers and their affiliates that directly sell tobacco
22 products in the domestic market to wholesalers, re-
23 tailers, or consumers, their successors and assigns,
24 and any subsequent fraudulent transferee (but only

1 to the extent of the interest or obligation fraudu-
2 lently transferred).
3 (2) DETERMINATION OF AMOUNT OF PAYMENT
4 DUE.—Each tobacco product manufacturer is liable
5 for its share of each installment in proportion to its
6 share of tobacco products sold in the domestic mar-
7 ket for the calendar year. One month after the end
8 of the calendar year, the Secretary shall make a
9 final determination of each tobacco product manu-
10 facturer's applicable base amount payment obliga-
11 tion.
12 (3) CALCULATION OF TOBACCO PRODUCT MAN-
13 UFACTURER'S SHARE OF ANNUAL PAYMENT.—The
14 share of the annual payment apportioned to a to-
15 bacco product manufacturer shall be equal to that
16 manufacturer's share of adjusted units, taking into
17 account the manufacturer's total production of such
18 units sold in the domestic market. A tobacco product
19 manufacturer's share of adjusted units shall be de-
20 termined as follows:
21 (A) UNITS.—A tobacco product manufac-
22 turer's number of units shall be determined by
23 counting each—
24 (i) pack of 20 cigarettes as 1 adjusted
25 unit;

(ii) 1.2 ounces of moist snuff as 0.75 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.35 adjusted units.

(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a smokeless tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units:	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

(C) ADJUSTED UNITS DETERMINED ON TOTAL DOMESTIC PRODUCTION.—For purposes of determining a manufacturer's number of adjusted units under subparagraph (B), a manufacturer's total production of units, whether intended for domestic consumption or export, shall be taken into account.

(D) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a tobacco product manufacturer has more than 200 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

1 (E) SMOKELESS EQUIVALENCY STUDY.—
2 Not later than January 1, 2003, the Secretary
3 shall submit to the Congress a report detailing
4 the extent to which youths are substituting
5 smokeless tobacco products for cigarettes. If the
6 Secretary determines that significant substi-
7 tution is occurring, the Secretary shall include
8 in the report recommendations to address sub-
9 stitution, including consideration of modifica-
10 tion of the provisions of subparagraph (A).
11 (e) COMPUTATIONS.—The determinations required
12 by subsection (d) shall be made and certified by the Sec-
13 retary of Treasury. The parties shall promptly provide the
14 Treasury Department with information sufficient for it to
15 make such determinations.
16 (f) NONAPPLICATION TO CERTAIN MANUFACTUR-
17 ERS.—
18 (1) EXEMPTION .—A manufacturer described in
19 paragraph (3) is exempt from the payments required
20 by subsection (b).
21 (2) LIMITATION.—Paragraph (1) applies only
22 to assessments on cigarettes to the extent that those
23 cigarettes constitute less than 3 percent of all ciga-
24 rettes manufactured and distributed to consumers in
25 any calendar year.

1 (3) TOBACCO PRODUCT MANUFACTURERS TO
2 WHICH SUBSECTION APPLIES.—A tobacco product
3 manufacturer is described in this paragraph if it—
4 (A) resolved tobacco-related civil actions
5 with more than 25 States before January 1,
6 1998, through written settlement agreements
7 signed by the attorneys general (or the equiva-
8 lent chief legal officer if there is no office of at-
9 torney general) of those States; and
10 (B) provides to all other States, not later
11 than December 31, 1998, the opportunity to
12 enter into written settlement agreements that—
13 (i) are substantially similar to the
14 agreements entered into with those 25
15 States; and
16 (ii) provide the other States with an-
17 nual payment terms that are equivalent to
18 the most favorable annual payment terms
19 of its written settlement agreements with
20 those 25 States.
21 **SEC. 403. ADJUSTMENTS.**
22 The applicable base amount under section 402(b) for
23 a given calendar year shall be adjusted as follows in deter-
24 mining the annual payment for that year:

(1) IN GENERAL.—Beginning with the ~~sixth~~ fourth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 402(b)(4) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the annual increase in the CPI, ~~adjusted (for calendar year 2002 and later years) by the volume adjustment under paragraph (2)~~.

(2) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(3) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

Tob - set - new leg -
McCain - amendments

John Ashcroft

AMENDMENT NO._____ Calendar No. __

Purpose: To strike provisions relating to consumer taxes.

IN TH ... ...ess.
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...s,

To reform and re ... ...anufactured,
marketed, ... by minors, to
redress th ... poses.

Referred t ...

AMENDMENT Nº 2427

By ASHCROFT

Bill/Res. No. to KENNEDY AMDT Nº 2422

1 Page(s)

GPO: 1996 35-821 (mac)

Order ... lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. ASHCROFT to the amendment (No. 2422) proposed by Mr. Kennedy

Viz:

In lieu of the language proposed to be inserted insert the following:

"CERTAIN PROVISIONS RELATING TO AMOUNTS IN TRUST FUND NULL AND VOID.--

Notwithstanding any other provision of law, the following provisions of this Act shall be null and void and not given effect:

(1) Paragraphs (1) and (2) of Section 401(b);

(2) Section 402(a); and

(3) Sections 404 through 406.".

As MODIFIED

Tob - SCT - new Leg - McCain - amendments

6-4 Amendments Mtg - McCain/Hollings/Kerry staff

~~[illegible]~~

1. Conrad - lose 1% of annual payment, not just of block grant (300 m)
(p. 125) Lance: make it more than 1% of 300m -
but don't take out of existing st. funds
EK: What does current law? Shouldn't be weaker.

Tarplin 2. Conrad - 50% to charities. p. 195
Ck w/ Pethards etc. Ask HHS on 50; amenable to some %age

✓ 3. Conrad - p. 18 - make clear - only allows states to do more stringent
OK

surf ✓ 4. Conrad - p. 121 - get 2nd page, but probably OK.
make clear that compliance check is official.

✓ 5. Conrad - p. 122 - follow-up inspections
OK.

6. Conrad - p. 124 - same as amend 1 really - shouldn't take out of unrestricted fund - perhaps higher %age

7. Conrad - p. 443 - figure out what Conrad means - "only"? "publicly available"?

8. Conrad - p. 228 - tobacco claim shall not include anti-fraud etc.
This dress up current claims? Seems dubious
Interrelationship w/ Greg? unclear.

1. Kerry - Prohibits any further approps to programs funded by this.
No.

2. Kerry - community-based tobacco scholars
Tarplin: make it allowable use of Secretary's fund?
RT to write up - give to DKass
DKass to go back also make state optic: designate an indiv.

✓ S. Lautenberg / G. Smith – go ahead with stricter ETS provisions.

OK

S. Chafee – smoking ban on airplane ~~to~~ flights

Probably OK – will check.

✓ Durbin – mass transit vehicles

OK – advert restrictions ~~apply~~ on outside ads

apply to all mass transit, incl. subways.

✓ Kaeding – effect on state tort law

OK.

McCain – take back – screwed up.

substantive intent OK.

Mach – hijack, p. 161

Tob - set - now leg - McCain - amendments S.L.C.

Conrad.

AMENDMENT NO. ____ Calendar No. ____

Purpose: To make a technical correction with respect to noncompliance with State retail and licensing laws.

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

S. 1415

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.

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 _____

Viz:

On page 125, lines 7 and 8, strike "this subtitle" and insert "section 452(b)(1)".

AMENDMENT NO. ____ Calendar No. ____

Purpose: To provide funds for counter-advertising programs.

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

S. 1415

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.

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 _____

Viz:

On page 195, between ~~lies~~ lines 17 and 18, insert the following flush sentence:

"Not less than 50 percent of the amounts made available under this subparagraph shall be used to carry out counter-advertising activities under clause (i).".

AMENDMENT NO. ____ Calendar No. ____

Purpose: To permit States to enact laws that are not less stringent than the FDA-related provisions of this Act.

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

S. 1415

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.

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 _____

Viz:

1 On page 18, line 19, insert "and not less stringent
2 than" after "addition to".

AMENDMENT NO. ____ Calendar No. ____

Purpose: To permit sting operations to ensure compliance with State retail licensing laws.

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

S. 1415

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.

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 _____

Viz:

On page 121, between lines 13 and 14, insert the following:

(IV) STING OPERATIONS PERMITTED.—Notwithstanding subclause (III), an individual shall be permitted as part of a compliance check to purchase, attempt to purchase, or possess tobacco products solely for the purpose of ensuring compliance with the

AMENDMENT NO. ____ Calendar No. ____

Purpose: To require the conduct of follow-up inspections of certain tobacco product sales and distribution outlets.

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

S. 1415

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.

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 _____

Viz:

1 On page 122, line 12, insert before the semicolon the
2 following: ", and conduct follow-up inspections of sales or
3 distribution outlets that are found to be in violation of
4 such law".

AMENDMENT NO. ____ Calendar No. ____

Purpose: To make a technical correction with respect to noncompliance with State retail and licensing laws.

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

S. 1415

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.

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 _____

Viz:

On page 124, line 9, strike "this subtitle" and insert "section 452(b)(1)".

AMENDMENT NO. ____ Calendar No. ____

Purpose: To modify the definition of addiction claim and dependence claim.

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

S. 1415

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.

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 _____

Viz:

1 On page 443, line 13, strike "seeks a" and insert
2 "seeks only a publicly available".

AMENDMENT NO. ____ Calendar No. ____

Purpose: To clarify the definition of tobacco claim.

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

S. 1415

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.

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 _____

Viz:

On page 228, line 19, insert after the period the following: "Such term shall not include any civil action brought by a Federal, State, local, or tribal government seeking civil penalties for violations of anti-fraud, antitrust, environmental health, hazardous substance, other consumer laws that relate to tobacco and health, advertising and marketing restrictions, ingredient disclosure requirements, youth access restrictions, protections from environmental tobacco smoke, or other tobacco control laws.".

AMENDMENT NO. ____ Calendar No. ____

Purpose: To provide that only funds deposited in the National Tobacco Trust Fund may be used to fund the programs and activities authorized under the bill.

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

S. 1415

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.

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. KERREY

Viz:

1 At the end of subtitle C of title XI add the following:

2 **SEC. ___. LIMITATION ON FUNDING OF PROGRAMS AND**

3 **ACTIVITIES.**

4 Notwithstanding any other provision of law, only

5 amounts deposited into the National Tobacco Trust Fund

6 may used to fund the programs and activities authorized

7 under this Act.

AMENDMENT NO. ____ Calendar No. ____

Purpose: To provide that States shall use a portion of their restricted settlement funds to support community-based activities of tobacco scholars.

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

S. 1415

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.

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. KERREY

Viz:

1 Section 1991D of the Public Health Service Act, as
2 added by section 221, is amended by inserting after sub-
3 section (g) the following:
4 "(i) COMMUNITY-BASED ACTIVITIES OF TOBACCO
5 SCHOLARS.—
6 "(1) IN GENERAL.—Of the sums made available
7 to the National Institutes of Health under this sec-
8 tion, the Director shall make available a portion of
9 such sums to support the community-based activities

of the tobacco scholars assigned to States in accordance with paragraph (2).

"(2) TOBACCO SCHOLARS.—The Director of the National Institutes of Health shall—

"(A) designate individuals to serve as tobacco scholars from among individuals who receive funding through the National Institutes of Health for tobacco-related research; and

"(B) assign a tobacco scholar to each State.

"(3) COMMUNITY-BASED ACTIVITIES.—For purposes of paragraph (1), the term 'community-based activities' includes—

"(A) public forums for sharing research by tobacco scholars and other tobacco-related research with the medical community within States; and

"(B) dissemination of information to the public on tobacco-related research and the health-related implications of the conclusions of such research through means such as public forums, public service announcements, advertisements, and television broadcasts.

Kerrey Tobacco Scholars Amendment

- Instructs NIH to designate NIH-funded researchers to serve as Tobacco Scholars.
- Each State would be assigned a Tobacco Scholar.
- Tobacco Scholars would be responsible for sharing the results of their tobacco-related research, and research by other scientists, with the general public and the medical community within each State through community-based activities. These educational efforts would focus on research conclusions and their implications for public health.
- These community-based activities can include public forums, educational programs, public service announcements, advertising, television broadcasts and other strategies developed by the Tobacco Scholar and the State.
- The cost of these community-based activities would be included within the NIH allocation from the Health and Health-Related Research Allocation Account.

On page 215, line 21, insert "A local government within a State shall have the authority to promulgate or enforce a law that provides additional protection from health hazards from environmental tobacco smoke to the protection provided under this title or, in the case of a local government situated in a State that has opted out of this title pursuant to section 507, provided under the law of such State."

Lautenberg / G. Smith

S.L.C.

John Chafee

AMENDMENT NO. ____ Calendar No. ____

Purpose: To prohibit smoking on scheduled airline flights.

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

S. 1415

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.

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 _____

Viz:

On page 216, between lines 18 and 19, insert the following:

SEC. 508. PROHIBITIONS AGAINST SMOKING ON SCHEDULED FLIGHTS.

(a) IN GENERAL.—Section 41706 of title 49, United States Code, is amended to read as follows:

1 **"§ 41706. Prohibitions against smoking on scheduled**
2 **flights**

3 "(a) SMOKING PROHIBITION IN INTRASTATE AND
4 INTERSTATE AIR TRANSPORTATION.—An individual may
5 not smoke in an aircraft on a scheduled airline flight seg-
6 ment in interstate air transportation or intrastate air
7 transportation.

8 "(b) SMOKING PROHIBITION IN FOREIGN AIR
9 TRANSPORTATION.—The Secretary of Transportation
10 shall require all air carriers and foreign air carriers to pro-
11 hibit, on and after the 120th day following the date of
12 the enactment of this section, smoking in any aircraft on
13 a scheduled airline flight segment within the United States
14 or between a place in the United States and a place out-
15 side the United States.

16 "(c) LIMITATION ON APPLICABILITY.—With respect
17 to an aircraft operated by a foreign air carrier, the smok-
18 ing prohibitions contained in subsections (a) and (b) shall
19 apply only to the passenger cabin and lavatory of the air-
20 craft.

21 "(d) REGULATIONS.—The Secretary shall prescribe
22 regulations necessary to carry out this section.".

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall take effect on the 60th day following
25 the date of the enactment of this Act.

AMENDMENT NO. ____ Calendar No. ____

Purpose: To clarify provisions relating to advertising on mass transit vehicles.

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

S. 1415

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.

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. DURBIN

Viz:

1 In section 1404(a)(1)(B), strike "on mass transit ve-
2 hicles" and insert "on or in mass transit vehicles and sys-
3 tems".

U.S. FOOD AND DRUG ADMINISTRATION
OFFICE OF THE CHIEF COUNSEL
5600 Fishers Lane (GCF-1), Room 6B12
Rockville, MD 20857

FACSIMILE TRANSMISSION RECORD

May 19, 1998

3 NUMBER OF PAGES (including coversheet)

TO: Lance Bultena

Facsimile No. 202-228-0326 Voice No. _____

FROM: Patricia Kaeding, Associate Chief Counsel

Facsimile No. 301-480-2255 Voice No. 301-827-1153

RE: Title III, Section 301(b) of Manager's Amendment

The amendment to the Federal Cigarette Labeling and Advertising Act discussed Sunday was to ensure that restrictions on advertising enacted under State law are not preempted. The amendment in the Manager's amendment goes further than that and could affect tort law significantly (i.e., Cipollone). The error was mine and I should have caught it before 7:00 last night. A substitute is attached. I have discussed this extensively with DOJ and Tom Perrelli, and they concur with the substitute amendment. This substitute should have no or a very minimal effect on tort law. Please call me to discuss this further if you have concerns. My direct line is above, and my pager number is (301) 303-0424 (just enter the number I should call).

NOTE: If you do not receive a legible document, or do not receive all of the pages, please telephone us immediately at the voice number above.

THIS DOCUMENT IS INTENDED ONLY FOR THE USE OF THE PARTY TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND PROTECTED FROM DISCLOSURE UNDER APPLICABLE LAW. If you are not the addressee, or a person authorized to deliver the document to the addressee, you are hereby notified that any review, disclosure, dissemination, copying, or other action based on the content of this communication is not authorized. If you have received this document in error, please immediately notify us by telephone and return it to us at the above address by mail. Thank you.

Manager's Amendment, Section 301(b) Currently provides:

Repeal of Prohibition on State Restriction.—Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended—

(1) by striking "(a) Additional statements.—" in subsection (a); and

(2) by striking subsection (b).

REPLACEMENT AMENDMENT to Manager's Amendment, Section 301(b)--

Modification of Prohibition on State Advertising Restrictions—Section 5(b) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334(b)) is amended by adding at the end the following—

"This provision shall not prevent any State or locality from affirmatively enacting restrictions based on smoking and health on the advertising and promotion of such cigarettes."

Ask Jeffrey to do it

As amended, 15 USC 1334, section 5 of the Federal Cigarette Labeling and Advertising Act, would read as follow (new language to existing law is in bold)--

FCLAA Sec. 5 [15 USC 1334]

(a) No statement relating to smoking and health, other than the statement required by section 4 of this Act, shall be required on any cigarette package.

(b) No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Act. ***This provision shall not prevent any State or locality from affirmatively enacting restrictions based on smoking and health on the advertising and promotion of such cigarettes.***

O:\ERN\ERN98.253

McCain

AMENDMENT NO. ____ Calendar No. ____

Purpose: To authorize additional entities to determine presumptive eligibility for children under the medicaid program.

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

S. 1415

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.

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 _____

Viz:

1 On page 24, line 22, insert "(including an elementary
2 school or secondary school, as such terms are defined in
3 section 14101 of the Elementary and Secondary Edu-
4 cation Act of 1965 (20 U.S.C. 8801), and an elementary
5 or secondary school operated or supported by the Bureau
6 of Indian Affairs)," after "school,".

1 "(3) annually recommend to Congress the allo-
2 cation of anti-tobacco research funds among the na-
3 tional research institutes; and
4 "(4) establish a clearinghouse for information
5 about tobacco-related research conducted by govern-
6 mental and non-governmental bodies.
7 "(f) TRIGGER.—No expenditure shall be made under
8 subsection (a) during any fiscal year in which the annual
9 amount appropriated for the National Institutes of Health
10 is less than the amount so appropriated for the prior fiscal
11 year, exclusive of ~~contributions~~ funds appropriated from the tobacco reserve fund.
12 "(g) REPORT.—The Director of the NIH shall every
13 2 years prepare and submit to the Congress a report
14 ———— research activities, including funding levels, for
15 research made available under subsection (c).
16 (b) MEDICAID COVERAGE OF OUTPATIENT SMOKING
17 CESSATION AGENTS.—Paragraph (2) of section 1927(d)
18 of the Public Health Service Act (42 U.S.C. 1396r-8(d))
19 is amended—
20 (1) by striking subparagraph (E) and redesig-
21 nating subparagraphs (F) through (J) as subpara-
22 graphs (E) through (I); and
23 (2) by striking "drugs." in subparagraph (F),
24 as redesignated, and inserting "drugs, except agents,

Elena — I think this is okay. Rich

Josh Gotbaum says fine

1 "SEC. 1991C. RESEARCH ACTIVITIES OF THE CENTERS FOR
2 DISEASE CONTROL AND PREVENTION.

3 "(a) DUTIES.—The Director of the Centers for Dis-
4 ease Control and Prevention shall, from amounts provided
5 under section 451(c), [~~and after~~] review [~~of~~] the study of the
6 Institute of Medicine, and carry out tobacco-related surveil-
7 lance and epidemiologic studies and develop, and conduct prevention research and [~~tobacco~~] con-
8 trol [~~and prevention~~] strategies related to tobacco and

Elena I think this is okay — Rich (see you later).

9 "(b) YOUTH SURVEILLANCE SYSTEMS.—From
10 amounts provided under section 451(b), the Director of
11 the Centers for Disease Control and Prevention shall pro-
12 vide for the use of youth surveillance systems to monitor
13 the use of all tobacco products by individuals under the
14 age of 18, including brands-used to enable determinations
15 to be made of company-specific youth market share.

16 "SEC. 1991D. RESEARCH ACTIVITIES OF THE NATIONAL IN-
17 STITUTES OF HEALTH.

18 "(a) FUNDING.—There are authorized to be appro-
19 priated, from amounts in the National Tobacco Settlement
20 Trust Fund established by section 401 of the National To-
21 bacco Policy and Youth Smoking Reduction Act, other
22 than from amounts in the State Litigation Settlement Ac-
23 count, to carry out this section $2,500,000,000 for each
24 of the fiscal years 1999 through 2008.

25 "(b) EXPENDITURE OF FUNDS.—The Director of the
26 National Institutes of Health shall provide funds to con-

Tob-set-new leg - McCain bill - amendments

THE WHITE HOUSE

Erskine -

We thought you might want to see a description of one of the two substitute tobacco bills that will be offered on the Senate floor. (The other is from Sen. Hatch and should closely resemble the June 20th settlement.) In brief: a 75¢ per pack fee, no look back penalties, no FDA jurisdiction, almost no farmers assistance, and much reduced health spending - but a Roth health care tax cut.

Elena

cc Bruce
Cynthia
Cynthia
Tom
Tom
Larry Stein
Erskine (w/ attached note)

Teenage Health Preservation Act

By Senator Domenici and Gramm

$5 BILLION ANTI-SMOKING, ANTI-DRUG ADVERTISING CAMPAIGN.

Establish a 5-member commission, whose members would be nominated by the President and confirmed by the Senate. The Commission would be responsible for developing and presenting to Congress a comprehensive anti-drug and anti-smoking advertising campaign aimed at teenagers. The campaign would be funded at a level of $5 billion over 5 years from the National Teenage Health Security Trust Fund.

ANTI-SMOKING AND ANTI-DRUG PROVISIONS AND PENALTIES.

Incorporate the proposals of Senators Coverdell and Craig to increase by 50% the drug interdiction budgets of the Customs Service, the Coast Guard, and the Department of Defense for activities along the U.S.-Mexico border and in the Caribbean region. Double the number of border patrol agents to achieve a level of 15,000 positions over the next five years, and increase by 25% the law enforcement budgets of the Drug Enforcement Administration and the FBI.

Adopt McCain anti-smuggling language which directs Treasury to require the placement of a unique serial number on each pack of cigarettes to assist in determining the location and date of production.

Include language previously adopted by the Senate which imposes penalties of not less than 10 years imprisonment for any adult who sells drugs to a minor; life imprisonment for a second offense.

Establish a federal penalty of not less than 20 years imprisonment for any person convicted of smuggling illegal drugs into the United States; life imprisonment upon conviction for a second offense.

Impose a fine of up to $100,000 and term of imprisonment up to 5 years for smuggling cigarettes into the U.S. Those who knowingly sell smuggled cigarettes to teenagers will face up to 1 year in prison and up to a $10,000 fine. Suspend federal student loan eligibility for teenagers who use illegal drugs or purchase cigarettes. The penalty for drug convictions will be a 1-year suspension of eligibility for federal student loans and a permanent loss of eligibility for a 2nd offense. The penalty for teen cigarette purchase will be a warning for the 1st offense; 6-month suspension of eligibility for a 2nd offense, and 1-year suspension for a 3rd offense.

Establish a "Teenage Health Security" block grant program to the states in which the distribution of funds is linked to state adoption of sanctions for teenage tobacco use.

Minimum penalties for under-age tobacco use, in addition to any other existing penalty, are to consist of a warning for the 1st offense; 6 month suspension of driver's license for a 2nd offense; and a 1 year license suspension for a 3rd offense -- the "3 smokes and you walk" provision.

Eligibility for grant funds would also require the adoption of minimum penalties for adults who knowingly and willfully sell cigarettes to minors – a $1,000 fine for a 1st offense; $5,000 for a 2nd offense; and a $10,000 fine and 1 year in prison for a 3rd offense.

PROMINENT DISPLAY OF WARNING LABELS.

Adopt the McCain requirement that warning statements on cigarette packages take-up not less than 25% of the upper space on the front and back of each package.

VENDING MACHINES INACCESSIBLE TO CHILDREN.

Vending machine sale of cigarettes will be restricted to areas that are not accessible to children or teenagers.

PAYMENT BY INDUSTRY EQUAL TO 75 CENTS PER PACK.

The act will provide for a payment from the tobacco industry equal to 75 cents per pack. The payment will be capped at a per pack amount that is estimated to be below the trigger point of significantly increased black market activity. After financing the tax reductions identified in Part VI, all remaining amounts will be deposited in a new "National Teenage Health Security Trust Fund."

PROVIDE FULL DEDUCTIBILITY OF HEALTH INSURANCE AND SMOKING CESSATION PROGRAMS.

Accelerate phase-in of 100% deductibility of health care insurance for self employed to be effective January 1, 1999. Allow all workers not covered by employer provided insurance to deduct fully the cost of health insurance (the Roth proposal, an "above the line" deduction).

In addition, low-income, working taxpayers who are eligible for the earned income credit could take advantage of this health insurance deduction. Specifically, the cost of health insurance premiums would be excluded from their modified adjusted gross income for purposes of the earned income credit. This would not apply to an individual covered by employer-provided health insurance or Medicaid.

The cost of any FDA approved smoking cessation program would be deductible and treated as an "above the line" deduction.

NATIONAL TEENAGE HEALTH SECURITY TRUST FUND.

The Trust Fund will finance all programs and initiatives created by this legislation. The Department of the Treasury will establish the accounting mechanism necessary to ensure

that Trust Fund deposits and outlays are credited properly. All expenditures from the fund will be outside of the spending caps but all will have to be appropriated annually; there will be no new entitlement or mandatory spending programs.

No distributions or expenditures from the Trust Fund will be permitted for any purpose other than the specific authorizations provided in the "Teenage Health Preservation Act." Any money remaining in the Trust Fund after the annual appropriations process has concluded will be transferred to Medicare.

INCREASE FUNDS FOR NATIONAL INSTITUTES OF HEALTH.

Earmark an additional $5 billion over the next 5 years from the Trust Fund to the NIH in addition to the $15.5 billion increases over 5 years provided in the Budget Resolution.

PROVIDE TRANSITION ASSISTANCE TO TOBACCO FARMERS.

Authorize a per acre payment to tobacco farmers that is equal to the per acre payments authorized in the Freedom to Farm legislation for wheat, corn, grain sorghum, barley, oats, upland cotton and rice combined: $1,496.

STATE SETTLEMENTS WITH TOBACCO COMPANIES.

Includes language which, without regard to any other provision of federal law, guarantees the right of tobacco companies and individual states to enter legally binding (within the border of each state) settlement agreements, including limited liability.

WINDFALL PROFIT TAX ON LAWYER'S FEES.

For states that have reached tobacco settlements, lawyer fees above $1,000 per hour but below $1,500 per hour will be subject to a surtax of 20%; fees in excess of $1,500 per hour will be subject to a surtax of 40%. For states that have not reached a tobacco settlement and for tobacco related class action cases, the 20% surtax would be applied to fees that exceed 5% of the settlement amount; the 40% surtax would apply to fees that exceed 10% of the settlement amount. The same rules would apply to any federal settlement. **5/19/98 12:29 PM**

Teenage Health Preservation Act

By Senator Domenici and Gramm

TITLE I –ANTI-SMOKING, ANTI-DRUG ADVERTISING CAMPAIGN

1998	1999	2000	2001	2002	TOTAL
---	$1 B.	$1 B.	$1 B.	$1 B.	$4 B.

TITLE II – ANTI-SMOKING, ANTI-DRUG PROVISIONS & PENALTIES

---	$1.5 B.	$1.5 B.	$1.5 B.	$1.5 B.	$6 B.

TITLE V – PAYMENT BY INDUSTRY EQUAL TO 75 CENTS PER PACK

-$1.6 B.	-$8.4 B.	-$8.5 B.	-$8.6 B.	-$8.7 B.	-$35.8 B.

TITLE VI – DEDUCTIBILITY OF HEALTH INSURANCE & SMOKING CESSATION.

---	$2.4 B.	$6.6 B.	$7.0B.	$7.5 B.	$23.5 B.

TITLE VIII – INCREASE FUNDS FOR NATIONAL INSTITUTE OF HEALTH

---	$1 B.	$1 B.	$1 B.	$1 B.	$4 B.

TITLE IX – TRANSITION ASSISTANCE TO TOBACCO FARMERS.

---	$250 M.	$250 M.	$250 M.	$250 M.	$1.0 B.

TITLE XI – WINDFALL PROFIT TAX ON LAWYER FEES

---	-$.75 B.	-$.75 B.	-$.75 B.	-$.75 B.	-$3 B.

TOTAL IMPACT ON DEFICIT

	-$1.6 B	-$3 B+$1.1 B	+$1.4 B	+$1.8 B	-$0.3 B