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**Tobacco-Settlement: Union
Lawsuits**

Tobacco - supplement -
union lawsuits

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Anthem

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October 1, 1997

* ADMITTED IN WI ONLY

VIA FACSIMILE NO. (504) 769-2121

Mr. Vic Bussie
President Emeritus
Louisiana AFL-CIO
Post Office Box 3477
Baton Rouge, LA 70821-3477

Dear Vic:

You have asked that we explain what legal standing Taft-Hartley Health & Welfare Funds ("Funds") have to pursue claims against the Tobacco Industry for recovery of medical and hospitalization benefits to Fund participants and beneficiaries afflicted with tobacco-related illnesses and diseases. Specifically, you have asked that we distinguish such claims from those that could arguably be advanced by private group health insurance carriers against the Tobacco Industry under the same or like legal theories.

As you know, our Funds are not funded by individual or group-based premiums. Instead, they are funded by fixed collectively bargained employer contributions and to a certain degree by employee self-pay contributions.¹ These contributions are submitted on an hours-worked formula by employers. They are paid on a pre-tax basis (as deductible expenses), and are typically part of an overall "pay package" negotiated by a union. At contract ratification time covered members traditionally allocate these monies and as an hourly contribution to the applicable Fund. While the Tax Code considers these contributions as employer-made, the reality is that working people simply act collectively to dedicate a portion of their hourly compensation package to finance a voluntary group health plan.

Funds typically do not have the contractual authority to adjust hourly contributions. The administered benefit package is formulated on expected contributions and, to a limited extent, Fund reserves. If claims experience critically increases, the trustees of an affected Fund have two choices:

¹ Self-pay rights are generally accorded to temporarily unemployed participants.

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(a) reduce the benefit package (or lighten eligibility requirements) or (b) persuade the sponsoring union to either (i) try to wrest a mid-term contract contribution increase at the bargaining table from signatory employers or (ii) convince its membership to give up a piece of the hourly wage rate for re-allocation as an increase to the welfare contribution. The first option is rarely realized, and the second option is as popular as a tax increase measure is to a legislator.

A private insurer, on the other hand, possesses the free market ability to periodically increase premiums. This prerogative, of course, is driven by the profit motive. Carriers make money on handling the risk. Our Funds are by law non-profit, tax exempt organizations. Their trustees and administrators are deemed fiduciaries by the Pension Reform Act of 1974 (ERISA) obligated to administer these Funds in a prudent manner and solely in the interest of Fund participants and beneficiaries.

The Funds in our Louisiana action are mostly self-insured. A handful insure all or some of their benefits through an insurance carrier, PPO or HMO. The premiums assessed by these insurers are experience rated. But the underlying funding arrangements are the same. These "insured" Funds operate on a fixed budget. If claims increase, the insurer increases premiums or the Fund cuts its benefit program to maintain the premium. Not infrequently, some of these Funds are forced to go self-insured because carriers refuse the risk or offer to do so only at prohibitively high premium levels. The Asbestos Workers Funds in our area are a prime example of this phenomenon. Private insurers shun these groups. Ironically, these groups are doubly plagued by the synergistic effects of asbestos exposure and tobacco use. My personal experiences with the 2 Louisiana Asbestos Workers Funds includes the legal structuring of terminations of health care coverages for retired insulators. The combined impact of asbestos-related diseases and tobacco/asbestos related cancers and respiratory ailments was quite dramatic on these groups. The Funds were forced to release these participants, many of whom retreated to Medicaid or Medicare.

Another comparison is worthy of note. Non-unionized employers may offer health care packages to their employees. However, a distinction is made between employee-only coverage, which is usually employer-subsidized, and family coverage. The latter is picked up by the employee, usually at rates of \$200-400 monthly. These rates are set by profit-oriented carriers who typically insure such single-employer plans. Our Funds almost universally utilize a more beneficial "composite" rate. Single and family coverage is rolled into one for purposes of figuring the per capita costs of maintaining a certain level of benefits. This procedure is more democratic in that all workers are pooled together for the purpose of financing a complete benefit package made uniformly available regardless of marital or family status. But it necessarily poses a greater expense to any Fund. The

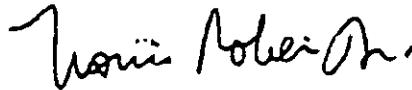
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added expense of paying tobacco-related medical claims is borne directly by the Fund and cannot be passed on to either contributing employers or tobacco users, as a private carrier is free to do.²

The plight of the Funds is essentially identical to the States' Medicaid funds. Those social programs are financed by taxes. Taxpayers are assessed contributions fixed by Congress. Our Funds depend upon whatever "tax" can be negotiated by their sponsoring unions with signatory employers, ultimately a piece of the employee wage package. Like government-sponsored programs, the Funds offer a comprehensive medical plan to their constituencies on a non-discriminatory basis. Unlike private insurers, neither a State Medicaid program nor a Fund can exclude tobacco users or pass on the added costs of coverage to this segment of their population base. Funds, not unlike Congress, face the unending political dilemma of convincing unions to negotiate employer contribution increases (or member wage reductions) to finance the costs of covering inordinate medical expenses associated with tobacco use. Funds cannot pass on this added cost to an open market. The worker/taxpayer picks up the tab for both increased Medicaid and Fund costs.

In closing, it should be noted that union-negotiated Funds, which typically cover sizeable segments of an industry provide working people with adequate to superior health care coverages otherwise not available on the open market at comparable prices. Small contractors in the building and construction or maritime industries could not alone subsidize coverages for their employees. But for these union programs, large numbers of workers and their families would access Medicaid. Indeed, our union sponsored Funds are very much like the health alliances contemplated by the Clinton Health Plan. They are very much akin to the Medicaid program and should be treated accordingly in their claims against the Tobacco Industry.

Very truly yours,



Louis L. Robein, Jr.

LLRjr:imm

² Another "single employer" distinction should be noted. Many such sponsors are utilizing "tobacco surcharges" (\$5-10 monthly) that are applied to their participating employees and beneficiaries who use tobacco products. We know of no Fund that has imposed such a cost containment device. Interestingly, private carriers who provide individual policies simply screen out tobacco users, or offer policies that are simply not affordable to the average consumer.

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GEORGE M. FLEMING

December 9, 1997

Via U.S. Mail

Mr. Bruce Reed
The White House
West Wing, 2nd Floor
Washington, D.C. 20500

*More lining
up at the trough
BR*

Re: **Inclusion of Synergy Victims and Union Funds in Tobacco Settlement**

Dear Mr. Reed:

I represent union health and welfare funds and asbestos/tobacco victims along with the law firms of LeBlanc, Maples & Waddell and Robein, Urann & Lurye of Louisiana. I write to inform you of our strong opposition to the proposed state attorney generals' tobacco settlement. The tobacco settlement is unfair in that it excludes individuals who have suffered damages as a result of exposure to both asbestos and tobacco and prevents union health and welfare funds from being compensated for expenditures on treating tobacco related illnesses. For these reasons, the settlement as proposed should not be approved.

Dual exposure to asbestos and tobacco smoke increases the risk of developing lung cancer by ninety (90) times compared to non-exposure. Individuals exposed to both asbestos and tobacco are known as "Synergy Victims" because of the synergistic toxic effect of these two substances. The tobacco and asbestos companies have known for decades of the exponentially increased risk of developing lung cancer from the combined exposure to these two substances. The settlement in its present form will make it impossible for these Synergy Victims to receive compensation as a result of the limitations on class actions and punitive damages.

Union health and welfare funds have spent hundreds of billions of dollars on treating tobacco related injuries. These funds are funded by the dues of millions of hard working Americans. These American workers have no choice in paying for treating tobacco related injuries. Unlike insurance companies, these funds do not charge an increased premium for smokers. Under the present settlement, these health and welfare funds will be forever barred from seeking compensation as third party payors for tobacco related illnesses.

As representatives of union health and welfare funds and Synergy Victims, I, along with the above law firms, have drafted a revised tobacco settlement bill which is enclosed. Essentially, the revised settlement provides for a \$15 billion trust fund over 25 years to compensate Synergy Victims. Additionally, the enclosed revised legislation will allow American workers to continue to seek compensation from the tobacco companies for expenditures by their health and welfare trust funds. I strongly urge you to reject the settlement in its present form unless it incorporates the provisions set out in the enclosed legislation. If you have any questions, I would be more than happy to provide additional information.

I would like to know your position with regard to the enclosed proposed legislation. Either Andres Pereira, another attorney in this office working with me, or I will call you in the next week to discuss where you stand on this proposal.

Very truly yours,

George M. Fleming

GMF:crd
Tob283/Reed gmf 12.9.7

Enclosure

COPY **revised**

**DRAFT OF PROPOSED LEGISLATION TO RESOLVE TOBACCO LITIGATION AND
INCLUDE SYNERGY VICTIMS AND ALLOW FOR CONTINUATION OF UNION
HEALTH AND WELFARE FUND CASES**

105th CONGRESS 2nd Session

H.R. ____

[OR IF IN SENATE]

S _____

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.

IN THE HOUSE OF REPRESENTATIVES

_____, 1997

Mr. [CONGRESS PERSON], [OTHER SPONSORS], introduced the following bill which was referred to the Committee on [DATE] and in addition to the Committee [COMMITTEE NAME], for a period to be subsequently determined by the Speaker, in each case for consideration for such provisions which fall within the jurisdiction of the committee concerned.

A BILL

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.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title . - This Act may be cited as the "Universal Tobacco Settlement Act".

(b) Table of Contents - The table of contents of this Act is as follows:

Sec. 1. Short Title; Table of Contents.

Sec. 2. Findings.

Sec. 3. Purposes.

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TITLE I - REGULATION OF THE TOBACCO INDUSTRY

Sec. 100. Definitions.

Subtitle A - Restriction on Marketing and Advertising

Sec. 101. Prohibitions on Advertising.

Sec. 102. General Restrictions.

Sec. 103. Format and Content Requirements for Labeling and Advertising.

Sec. 104. Statement of Intended Use.

Sec. 105. Ban on Non-tobacco Items and Services, Contests and Games of Chance, and Sponsorship of Events.

Sec. 106. Use of Product Descriptors.

Subtitle B - Warnings, Labeling and Packaging

Sec. 111. Cigarette Warnings.

Sec. 112. Smokeless Tobacco Warnings.

Sec. 113. Ingredients.

Sec. 114. Enforcement, Regulations, and Construction.

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Sec. 116. Reports.

Sec. 117. Exports.

Sec. 118. Repeals.

Subtitle C - Restriction on Access to Tobacco Products

Sec. 121. Requirements Relating to Retailers.

Sec. 122. Manufacture, Sale, and Distribution.

Subtitle D - Licensing of Retail Tobacco Sellers

Sec. 131. Establishment of Program.

Sec. 132. Requirements.

Sec. 133. Penalties, Revocations and Suspensions.

Sec. 134. Federal Licensing of Military and Other Entities.

Subtitle E - Regulation of Tobacco Product Development and Manufacturing

Sec. 141. Reference.

Sec. 142. Treatment of Tobacco Products as Drugs.

Sec. 143. Health and Safety Regulation of Tobacco Products.

Subtitle F - Compliance Plans and Corporate Culture

Sec. 151. Compliance Plans.

Sec. 152. Compliance Programs.

Sec. 153. Whistleblower Protections.

Sec. 154. Provisions Relating to Lobbying.

Sec. 155. Termination of Certain Entities.

Sec. 156. Enforcement.

TITLE II - REDUCTION IN UNDERAGE TOBACCO USE

Sec. 201. Purpose.

Sec. 202. Determination of Underage Use Base Percentages.

Sec. 203. Annual Daily Incidence of Underage Use of Tobacco Products.

Sec. 204. Required Reduction in Underage Tobacco Use.

Sec. 205. Application of Surcharges.

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TITLE III - STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

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Sec. 302. Smoke-free Environment Policy.

Sec. 303. Citizen Actions.

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Sec. 305. Regulations.

Sec. 306. Effective Date.

TITLE IV - NATIONAL TOBACCO SETTLEMENT TRUST FUND

Sec. 401. Establishment of Trust Fund.

Sec. 402. Liability of Industry Sources.

Sec. 403. Enforcement.

TITLE V - PUBLIC HEALTH AND OTHER PROGRAMS

Subtitle A - Public Health Block Grant Program

Sec. 501. Public Health Trust Fund.

Sec. 502. Block Grants to States.

Sec. 503. Allotments.

Sec. 504. Use of Funds.

Sec. 505. Withholding of Funds.

Subtitle B - Other Programs

Sec. 511. National Smoking Cessation Program.

Sec. 512. National Reduction in Tobacco Usage Program.

Sec. 513. National Tobacco-Free Public Education Program.

Sec. 514. National Event Sponsorship Program.

Sec. 515. National Community Action Program.

Sec. 516. National Cessation Research Program.

Sec. 517. Synergy Victim Trust Fund.

Sec. 518. Use of Surcharge Payments.

TITLE VI - CONSENT DECREES, NON-PARTICIPATING MANUFACTURERS, AND STATE ENFORCEMENT

Sec. 601. Purposes.

Subtitle A - Consent Decrees and Non-Participating Manufacturers

Sec. 611. Consent Decrees.

Sec. 612. National Tobacco Control Protocol.

Sec. 613. Non-participating Manufacturers.

Subtitle B - State Enforcement

Sec. 621. Requirement of No Sale to Minors law.

Sec. 622. State Reporting.

Sec. 623. Reduction in State Payments.

TITLE VII - PROVISIONS RELATING TO TOBACCO-RELATED CIVIL ACTIONS

Sec. 701. General Immunity.

Sec. 702. Civil Liability for Past Conduct.

Sec. 703. Civil Liability for Future Conduct.

Sec. 704. Non-participating Manufacturers.

TITLE VIII - PUBLIC DISCLOSURE OF HEALTH RESEARCH

Sec. 801. Purpose.

Sec. 802. National Tobacco Document Depository.

TITLE IX - TOBACCO PRODUCTS

Sec. 901. Definitions.

Sec. 902. Purpose.

Sec. 903. Promulgation of Regulations.

Sec. 904. Minimum Requirements.

Sec. 906. Scientific Advisory Committee.

Sec. 907. Requirements Relating to Nicotine and Other Constituents.

Sec. 909. Good Manufacturing Practice Standards.

Sec. 910. Disclosure and Reporting of Non-tobacco Ingredients.

Sec. 911. Nonapplication of Certain Provisions.

TITLE X - ASSISTANCE TO TOBACCO GROWERS AND COMMUNITIES

Sec. 1001. Short Title; Table of Contents.

Sec. 1002. Definitions.

Subtitle A - Tobacco Community Revitalization Trust Fund

Sec. 1011. Establishment of Trust Fund.

Sec. 1012. Contributions by Tobacco Product Manufacturers and Importers.

Subtitle B - Agricultural Market Transition Assistance

Sec. 1021. Payments for Lost Tobacco Quota.

Sec. 1022. Industry Payments for All Department Costs Associated With Tobacco Production.

Sec. 1023. Tobacco Community Economic Development Grants.

Sec. 1024. Modifications in Federal Tobacco Programs.

Subtitle C - Farmer and Worker Transition Assistance

Sec. 1031. Tobacco Worker Transition Program.

Sec. 1032. Farmer Opportunity Grants.

Subtitle D - Immunity.

Sec. 1041. General Immunity for Tobacco Producers and Warehousekeepers.

TITLE XI - EFFECTIVE DATES AND OTHER PROVISIONS

Sec. 1101. Effective dates.

Sec. 1102. Native Americans.

Sec. 1103. Preemption.

SEC. 2. FINDINGS.

(a) General Findings . - Congress makes the following findings:

(1) The Food and Drug Administration and other public health authorities view the use of tobacco products by the nation's children as a "pediatric disease" of epic and worsening proportions that results in new generations of tobacco-dependent children and adults.

(2) There is a consensus within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects. They are particularly devastating when used by individuals exposed to asbestos containing materials. It is now recognized that the dual exposure to asbestos and tobacco smoke increases the risk of developing lung cancer by ninety (90) times those not so exposed. Individuals exposed to asbestos and tobacco smoke shall be known as "Synergy Victims".

(3) The Food and Drug Administration and other health authorities have concluded that virtually all new users of tobacco products are under the age of 18. Virtually all Federal, State, and local officials and entities believe that tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents and as such, sweeping new restriction of the sale, promotion, and distribution of such products are needed.

(4) Federal, State, and local governments lack many of the legal means and resources needed to address the societal problems caused by the use of tobacco products.

(5) Public health authorities believe that the societal benefits of enacting tobacco settlement legislation in human and economic terms would be vast. The Food and Drug Administration found that reducing underage tobacco use 50 percent "would prevent well over 60,000 early deaths". The Food and Drug Administration has estimated that the monetary value of the regulations promulgated as a result of this Act will be worth up to \$43,000,000,000 per year in reduced medical costs, improved productivity, and the benefit of avoiding the premature death of loved ones.

(6) The unique position occupied by tobacco in the history and economy of the United States, the magnitude of the actual and potential tobacco-related litigation, the need to avoid the cost, expense, uncertainty, and inconsistency associated with such protracted litigation, the need to limit the sale, distribution, marketing, and advertising of tobacco products to persons of legal age, and the need to educate the public (especially young people) of the health effects of using tobacco products all dictate that it would be in the public interest to enact legislation to facilitate a resolution of such matters.

(7) The use of tobacco products has been particularly devastating to those individuals also affected as a result of asbestos exposure. It has been estimated that an individual exposed to asbestos who also smoked has a Ninety (90) times greater risk of developing lung cancer compared to the unexposed population. By contrast, a smoker not exposed to asbestos has about a fifteen (15) times greater risk of developing lung cancer compared to the unexposed population. These individuals who were exposed to asbestos and who also smoked are known as synergy victims.

(b) Findings Related to Interstate Commerce and the Judicial System . - Congress makes the following findings:

(1) The sale, distribution, marketing, advertising, and use of tobacco products are activities substantially affecting interstate commerce. Such products are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis and have a substantial effect on the economy of the United States.

(2) The sale, distribution, marketing, advertising, and use of tobacco products are activities that substantially affect interstate commerce by virtue of the health care and other costs that Federal and State governmental authorities have incurred because of the usage of tobacco products.

(3) Various civil actions brought by State attorneys general, cities, counties, the Commonwealth of Puerto Rico, third-party payors, and other private classes and individuals to recover damages relating to tobacco-related diseases, conditions and products are pending throughout the United states, many of these actions are slow-moving, expensive, and burdensome not only for the litigants but also for Federal and State judicial systems.

SEC. 3. PURPOSES.

It is the purpose of this Act to -

(1) reiterate and enhance the authority of the Food and Drug Administration to regulate tobacco products and provide for tobacco industry funding of the oversight activities of the administration;

(2) ban all outdoor tobacco advertising and ban all cartoon characters and human figures used in connection with tobacco advertising;

(3) provide for the funding by the tobacco industry of an aggressive Federal enforcement program relating to tobacco advertising and distribution, including a State-administered retail licensing system to prevent minors from obtaining tobacco products;

(4) subject the tobacco industry to severe financial penalties in the event that underage tobacco usage does not decline radically over the next 10 years;

(5) provide for the establishment of national standards to control the manufacturing of tobacco products and the ingredients used in such products;

(6) provide certain regulatory powers to the Food and Drug Administration to encourage the development and marketing by the tobacco industry of "less hazardous tobacco products", including the power to regulate the level of nicotine in such products;

(7) require the manufacturers of tobacco products to disclose all present and future non-public internal laboratory research regarding tobacco products;

(8) establish a minimum Federal standard to limit smoking in public places;

(9) provide for the establishment of a National Tobacco Settlement Trust Fund to be funded by the tobacco industry and used in accordance with this Act;

(10) provide for the establishment of a national education-oriented counter advertising and tobacco control campaign to be funded through the National Tobacco Settlement Trust Fund;

(11) provide annual payments to States to fund health benefits programs and to create a tobacco products liability judgments and settlements fund to be funded through the National Tobacco Settlement Trust Fund; and

(12) provide for the establishment of a national program of smoking cessation to be funded through the National Tobacco Settlement Trust Fund.

(13) provide for the establishment of the Synergy Victim Trust Fund for compensation of synergy victims to be funded through the National Tobacco Settlement Trust Fund.

TITLE I REGULATION OF THE TOBACCO INDUSTRY

SEC. 100. Definitions. In this Act:

(1) Brand . - The term "brand" means a variety of a tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging.

(2) Cigar . - The term "cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette or cigarillo within the meaning of paragraph (3) or (4)).

(3) Cigarette . - The term "cigarette" means any product which contains nicotine, is intended to be burned under ordinary conditions of use, and consists of -

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).

(4) Cigarillos . - The term "cigarillos" means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco [other than any roll of tobacco which is a cigarette within the meaning of paragraph (3)] and as to which 1,000 units weigh not more than 3 pounds.

(5) Cigarette tobacco . - The term "cigarette tobacco" means any product that consists of loose tobacco that contains or delivers nicotine and is intended for use by persons in a cigarette. Unless otherwise stated, the requirements of this Act pertaining to cigarettes shall also apply to cigarette tobacco.

(6) Commerce . - The term "commerce" means -

(A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands or any territory or possession of the United States;

(B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands or any territory or possession of the United States; or

(c) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, or any territory or possession of the United States.

(7) Commissioner . - The term "Commissioner" means the Commissioner of Food and Drugs.

(8) Distributor . - The term "distributor" means any person who furthers the distribution of tobacco products, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Such term shall not include common carriers.

(9) Little cigar . - The term "little cigar" means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco [other than any roll of tobacco which is a cigarette within the meaning of subsection (1)] and as to which 1,000 units weigh not more than 3 pounds.

(10) Manufacturer . - The term "manufacturer" means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished tobacco product.

(11) Nicotine . - The term "nicotine" means the chemical substance named 3-(1-Methyl-2-pyrrolidiny) pyridine or $C_{10}H_{14}N_2$, including any salt or complex of nicotine.

(12) Package . - The term "package" means a pack, box, carton, or container of any kind in which tobacco products are offered for sale, sold, or otherwise distributed to consumers.

(13) Person . - The term "person" means an individual, partnership, corporation, or any other business or legal entity.

(14) Pipe tobacco . - The term "pipe tobacco" means any loose tobacco that, because of its appearance, type, packaging, or labeling, is likely to be offered to, or purchased by, consumers as a tobacco product to be smoked in a pipe.

(15) Point of sale . - The term "point of sale" means any location at which an individual can purchase or otherwise obtain tobacco products for personal consumption.

(16) Retailer . - The term "retailer" means any person who sells tobacco products to individuals for personal consumption, or who operates a facility where vending machines or self-service displays are permitted under this title.

(17) Sale . - The term "sale" includes the selling, providing samples of, or otherwise making tobacco products available for personal consumption in any place within the scope of this Act.

(18) Secretary . - The term "Secretary" means the Secretary of Health and Human Services.

(19) Smokeless tobacco . - The term "smokeless tobacco" means any product that consists of cut, ground, powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral or nasal cavity.

(20) State . - The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States. Such term includes any political division of any State.

(21) Tobacco . - The term "tobacco" means tobacco in its unmanufactured form.

(22) Tobacco product . - The term "tobacco product" means cigars, cigarettes, cigarillos, cigarette tobacco, little cigars, pipe tobacco, and smokeless tobacco.

(23) Trust fund . - The term "Trust Fund" means the National Tobacco Settlement Trust Fund established under section 401.

(24) Synergy Victims . - The term "Synergy Victims" means those individuals who were exposed to asbestos and tobacco smoke.

(25) Union Health and Welfare Fund. - The term "union health and welfare fund" means those Taft-Hartley Health and Welfare Funds which are funded by fixed collectively bargained, employer contributions and to a certain degree by employee self-pay contributions. Unlike "private insurers", these funds are by law non-profit, tax exempt organizations.

Subtitle A - Restriction on Marketing and Advertising

SEC. 101. Prohibitions on Advertising. (a) Prohibition on Outdoor Advertising . -

(1) In general . - No manufacturer, distributor, or retailer may use any form of outdoor tobacco product advertising, including billboards, posters, or placards.

(2) Stadia and arenas . - Except as otherwise provided in this title, a manufacturer, distributor, or retailer shall not advertise tobacco products in any arena or stadium where athletic, musical, artistic, or other social or cultural events or activities occur.

(b) Prohibition on Use of Human Images and Cartoons . - No manufacturer, distributor, or retailer may use a human image or a cartoon character or cartoon-type character in its advertising, labeling, or promotional material with respect to a tobacco product.

(c) Prohibition on Advertising on the Internet . - No manufacturer, distributor, or retailer may use the Internet to advertise tobacco products unless such an advertisement is inaccessible in or from the United States.

(d) Prohibition on Point-of-Sale Advertising . -

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

(2) Adult-only stores and tobacco outlets . - Paragraph (1) shall not apply to point of sales advertising at adult-only stores and tobacco outlets.

(3) Permissible advertising . -

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

(B) Market share manufacturers . - A manufacturer with at least 25 percent of the market share of the tobacco product involved may display an additional point-of-sale advertisement in or at each location at which tobacco products are offered for sale.

(c) Retailers . - A retailer may have not more than 1 point-of-sale advertisement relating to the retailer's own or its wholesaler's contracted retailer or private label brand of tobacco product. No manufacturer or distributor may enter into any arrangement with a retailer to limit the ability of the retailer to display any form of permissible point-of-sale advertisement or promotional material originating with another manufacturer or distributor.

(4) Limitations . -

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

(B) Audio and video formats . - Audio and video advertisements permitted under section 103(c) may be distributed to individuals who are 18 years of age or older at point of sale but may not be played or viewed at such point of sale.

(c) Display fixtures . - Display fixtures in the form of signs consisting of brand name and price and not larger than 2 inches in height are permitted.

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

SEC. 102. General Restrictions.

(a) Restriction on Product Names . - A manufacturer shall not use a trade or brand name of a nontobacco product as the trade or brand name for a cigarette or smokeless tobacco product, except for a tobacco product whose trade or brand name was on both a tobacco product and a nontobacco product that were sold in the United States on or before January 1, 1995. (b) Advertising Limited to FDA Specified Media .

(1) In general . - A manufacturer, distributor, or retailer may, in accordance with this title, disseminate or cause to be disseminated advertising or labeling which bears a tobacco product brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification only in newspapers, in magazines, in periodicals or other publications (whether periodic or limited distribution), on billboards, posters and placards in accordance with section 101(a), in nonpoint-of-sale promotional material (including direct mail), in point-of-sale promotional material, and in audio or video formats delivered at a point-of-sale.

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

(3) Action by commissioner. -

(c) Restriction on Placement in Entertainment Media . -

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

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

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

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

(d) Restrictions on Glamorization of Tobacco Products . - No direct or indirect payment shall be made by any manufacturer, distributor, or retailer to any entity for the purpose of promoting the image or use of a tobacco product through print or film media that appeals to individuals under 18 years of age or through a live performance by an entertainment artist that appeals to such individuals.

Sec. 103. Format and Content Requirements for Labeling and Advertising.

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

(b) Certain Advertising Excepted . -

(1) In general . - Subsection (a) shall not apply to advertising -

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

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

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

(B) that appears in any publication (whether periodic, limited, or controlled distribution) that the manufacturer, distributor, or retailer demonstrates is an adult publication.

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

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

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

(c) Audio or Video Formats . - Each manufacturer, distributor, and retailer advertising or causing to be advertised any advertising for a tobacco product in an audio or video format shall comply with the following:

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

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

Sec. 104. Statement of Intended Use.

(a) Requirement . - Each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, advertising concerning cigarettes, cigarette tobacco, or smokeless tobacco products otherwise permitted under this title shall include, as provided in section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352), the established name of the product and a statement of the intended use of the product as provided for in subsection (b).

(b) Use Statements . -

(1) Cigarettes . - A statement of intended use for cigarettes or cigarette tobacco is as follows (whichever is appropriate):

Cigarettes - A Nicotine-Delivery Device for Persons 18 or Older.

Cigarette Tobacco - A Nicotine-Delivery Device for Persons 18 or Older.

(2) Smokeless tobacco . - A statement of intended use for a smokeless tobacco product is as follows (whichever is appropriate):

Loose Leaf Chewing Tobacco - A Nicotine-Delivery Device for Persons 18 or Older.

Plug Chewing Tobacco - A Nicotine-Delivery Device for Persons 18 or Older.

Twist Chewing Tobacco - A Nicotine-Delivery Device for Persons 18 or Older.

Moist Snuff - A Nicotine-Delivery Device for Persons 18 or Older.

Dry Snuff - A Nicotine-Delivery Device for Persons 18 or Older.

(c) Type and Location . - Requirements with respect to type size, style, font, and location shall be determined by the Commissioner.

Sec. 105. Ban on Non-tobacco Items and Services, Contests and Games of Chance, and Sponsorship of Events.

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

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

(c) **Sponsorship** . -

(1) **In general** . - No manufacturer, distributor, or retailer shall sponsor or cause to be sponsored any athletic, musical, artistic, or other social or cultural event, or any entry or team in any event, in which the brand name (alone or in conjunction with any other word), logo, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification similar or identical to those used for tobacco products is used.

(2) **Use of corporate name** . - A manufacturer, distributor, or retailer may sponsor or cause to be sponsored any athletic, musical, artistic, or other social or cultural event in the name of the corporation which manufactures the tobacco product if -

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

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

Sec. 106. Use of Product Descriptors.

(a) **In General** . - With respect to a tobacco product, the label of which bears a product description (such as "light" or "low tar"), such label shall also contain, and any advertisement concerning such product shall contain, a mandatory disclaimer, to be established by the Secretary, that states that such product has not been shown to be less hazardous than another product of that type.

(b) **Rule of Construction** . - Nothing in this section shall be construed to limit the authority of the Food and Drug Administration with respect to words used as product descriptors.

Subtitle B - Warnings, Labeling and Packaging

Sec. 111. Cigarette warnings.

(a) **In General** . -

(1) **Packaging** . - It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

WARNING: Cigarettes Are Addictive.

WARNING: Tobacco Smoke Can Harm Your Children.

WARNING: Cigarettes Cause Fatal Lung Disease.

WARNING: Cigarettes Cause Cancer.

WARNING: Cigarettes Cause Strokes And Heart Disease.

WARNING: Smoking During Pregnancy Can Harm Your Baby.

WARNING: Smoking Can Kill You.

WARNING: Tobacco Smoke Causes Fatal Lung Disease In Nonsmokers.

WARNING: Quitting Smoking Now Greatly Reduces Serious Risks To Your Health.

(2) Advertising . - It shall be unlawful for any manufacturer or importer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless the advertising bears, in accordance with the requirements of this section, one of the following labels:

WARNING: Cigarettes Are Addictive.

WARNING: Tobacco Smoke Can Harm Your Children.

WARNING: Cigarettes Cause Fatal Lung Disease.

WARNING: Cigarettes Cause Cancer.

WARNING: Cigarettes Cause Strokes And Heart Disease.

WARNING: Smoking During Pregnancy Can Harm Your Baby.

WARNING: Smoking Can Kill You.

WARNING: Tobacco Smoke Causes Fatal Lung Disease In Nonsmokers.

WARNING: Quitting Smoking Now Greatly Reduces Serious Risks To Your Health.

(b) Requirements for Labeling . -

(1) Location . - Each label statement required by paragraph (1) of subsection (a) shall be located on the upper portion of the front panel of the cigarette package (or carton) and occupy not less than 25 percent of such front panel.

(2) Type and color . - With respect to each label statement required by paragraph (1) of subsection (a), the phrase "WARNING" shall appear in capital letters and the label statement shall be printed in

17 point type with adjustments as determined appropriate by the Commissioner to reflect the length of the required statement. All the letters in the label shall appear in conspicuous and legible type, in contrast by typography, layout, or color with all other printed material on the package, and be printed in an alternating black-on-white and white-on-black format as determined appropriate by the Commissioner.

(3) Exception . - The provisions of paragraph (1) shall not apply in the case of a flip-top cigarette package (offered for sale on the date of enactment of this Act) where the front portion of the flip-top does not comprise at least 25 percent of the front panel. In the case of such a package, the label statement required by paragraph (1) of subsection (a) shall occupy the entire front portion of the flip top.

(c) Requirements for Advertising . -

(1) Location . - Each label statement required by paragraph (2) of subsection (a) shall occupy not less than 20 percent of the area of the advertisement involved.

(2) Type and color . -

(A) Type . - With respect to each label statement required by paragraph (2) of subsection (a), the phrase "WARNING" shall appear in capital letters and the label statement shall be printed in the following types:

(I) With respect to whole page advertisements on broadsheet newspaper - 45 point type.

(ii) With respect to half page advertisements on broadsheet newspaper - 39 point type.

(iii) With respect to whole page advertisements on tabloid newspaper - 39 point type.

(iv) With respect to half page advertisements on tabloid newspaper - 27 point type.

(v) With respect to DPS magazine advertisements point type. (vi) With respect to whole page magazine advertisements point type. (vii) With respect to 28cm x 3 column advertisements point type. (viii) With respect to 20cm x 2 column advertisements point type.

The Commissioner may revise the required type sizes as the Commissioner determines appropriate within the 20 percent requirement.

(B) Color . - All the letters in the label under this paragraph shall appear in conspicuous and legible type, in contrast by typography, layout, or color with all other printed material on the package, and be printed in an alternating black-on-white and white-on-black format as determined appropriate by the Commissioner.

(d) Rotation of Label Statements . -

(1) In general . - Except as provided in paragraph (2), the label statements specified in paragraphs (1) and (2) of subsection (a) shall be rotated by each manufacturer or importer of cigarettes quarterly in alternating sequence on packages of each brand of cigarettes manufactured by the manufacturer or importer and in the advertisements for each such brand of cigarettes in accordance with a plan submitted by the manufacturer or importer and approved by the Federal Trade Commission. The Federal Trade Commission shall approve a plan submitted by a manufacturer or importer of cigarettes which will provide the rotation required by this subsection and which assures that all of the labels required by paragraphs (1) and (2) will be displayed by the manufacturer or importer at the same time.

(2) Application of other rotation requirements . -

(A) In general . - A manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation described in subparagraph (c) apply with respect to a brand style of cigarettes manufactured or imported by such manufacturer or importer if -

(i) the number of cigarettes of such brand style sold in the fiscal year of the manufacturer or importer preceding the submission of the application is less than $\frac{1}{4}$ of 1 percent of all the cigarettes sold in the United States in such year; and

(ii) more than $\frac{1}{2}$ of the cigarettes manufactured or imported by such manufacturer or importer for sale in the United States are packaged into brand styles which meet the requirements of clause (i).

If an application is approved by the Commission, the label rotation described in subparagraph (c) shall apply with respect to the applicant during the 1-year period beginning on the date of the application approval.

(B) Plan . - An applicant under subparagraph (A) shall include in its application a plan under which the label statements specified in paragraph (1) of subsection (a) will be rotated by the applicant manufacturer or importer in accordance with the label rotation described in subparagraph (C).

(c) Other rotation requirements . - Under the label rotation which the manufacturer or importer with an approved application may put into effect, each of the labels specified in paragraph (1) of subsection (a) shall appear on the packages of each brand style of cigarettes with respect to which the application was approved an equal number of times within the 12-month period beginning on the date of the approval by the Commission of the application.

(e) Application of Requirement . - Subsection (a) does not apply to a distributor, a retailer of cigarettes who does not manufacture, package, or import cigarettes for sale or distribution within the United States.

(f) Television and Radio Advertising . - It shall be unlawful to advertise cigarettes and little cigars on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

SEC. 112. SMOKELESS TOBACCO WARNINGS.

(a) In General . -

(1) Packaging . - It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any smokeless tobacco product the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

WARNING: This Product May Cause Mouth Cancer.

WARNING: This Product May Cause Gum Disease And Tooth Loss.

WARNING: This Product Is Not A Safe Alternative To Cigarettes.

WARNING: Smokeless Tobacco Is Addictive.

(2) Advertising . - It shall be unlawful for any manufacturer or importer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless the advertising bears, in accordance with the requirements of this section, one of the following labels:

WARNING: This Product May Cause Mouth Cancer.

WARNING: This Product May Cause Gum Disease And Tooth Loss.

WARNING: This Product Is Not A Safe Alternative To Cigarettes.

WARNING: Smokeless Tobacco Is Addictive.

(b) Requirements for Labeling . -

(1) Location . - Each label statement required by paragraph (1) of subsection (a) shall be located on the principal display panel of the product and occupy not less than 25 percent of such panel.

(2) Type and color . - With respect to each label statement required by paragraph (1) of subsection (a), the phrase "WARNING" shall appear in capital letters and the label statement shall be printed in 17 point type with adjustments as determined appropriate by the Commissioner to reflect the length of the required statement. All the letters in the label shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the package and be printed in an alternating black on white and white on black format as determined appropriate by the Commissioner.

(c) Advertising and Rotation . - The provisions of subsections (c) and (d)(1) of section 111 shall apply to advertisements for smokeless tobacco products and the rotation of the label statements required under subsection (a)(1) on such products.

(d) Application of Requirement . - Subsection (a) does not apply to a distributor or a retailer of smokeless tobacco products who does not manufacture, package, or import such products for sale or distribution within the United States.

(e) Television and Radio Advertising . - It shall be unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

SEC. 113. INGREDIENTS. Each person who manufactures, packages, or imports cigarettes or smokeless tobacco products shall annually provide the Secretary with the information required under section 910 of the Federal Food, Drug, and Cosmetic Act (as added by section 143(3) of this Act).

SEC. 114. ENFORCEMENT, REGULATIONS, AND CONSTRUCTION.

(a) Enforcement . -

(1) In general . - A violation of section 111 or 112 or the regulations promulgated pursuant to this subtitle shall be considered a violation of section 5 of the Federal Trade Commission Act.

(2) Fines . - Any person who is found to violate any provision of sections 111, 112, or 113(a) shall be guilty of a misdemeanor and shall, on conviction thereof, be subject to a fine of not more than \$10,000. (b) Injunctions . - The several district courts of the United States are vested with jurisdiction, for cause shown, to prevent and restrain violations of this subtitle upon the application of the Federal Trade Commission in the case of a violation of section 111 or 112 or upon application of the Attorney General of the United States acting through the several United States attorneys in their several districts in the case of a violation of section 113. (c) Regulations . - Not later than 180 days after the date of the enactment of this Act, the Federal Trade Commission shall promulgate such regulations as it may require to implement sections 111 and 112. (d) Construction . - Nothing in this subtitle (other than the requirements of sections 111, 112, and 113) shall be construed to limit, restrict, or expand the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco products.

SEC. 115. PREEMPTION.

(a) Federal Action . - No statement relating to the use of cigarettes or smokeless tobacco products and health, other than the statements required by sections 111 or 112, shall be required by any Federal agency to appear on any package or in any advertisement of cigarettes or a smokeless tobacco product.

(b) State and Local Action . - No statement relating to the use of cigarettes or smokeless tobacco products and health, other than the statements required by sections 111 and 112, shall be required by any State or local statute or regulation to be included on any package or in any advertisement of cigarettes or a smokeless tobacco product.

(c) Effect on Liability Law . - Except as otherwise provided in this Act, nothing in this subtitle shall relieve any person from liability at common law or under State statutory law to any other person.

SEC. 116. REPORTS.

(a) Secretary's Report . - Not later than 6 months after the date of enactment of this Act, and biennially thereafter, the Secretary shall prepare and submit to Congress a report containing -

(1) a description of the effects of health education efforts on the use of cigarettes and smokeless tobacco products;

(2) a description of the use by the public of cigarettes and smokeless tobacco products;

(3) an evaluation of the health effects of cigarettes and smokeless tobacco products and the identification of areas appropriate for further research; and

(4) such recommendations for legislation and administrative action as the Secretary considers appropriate.

(b) FTC Report . - Not later than 6 months after the date of enactment of this Act, and biennially thereafter, the Federal Trade Commission shall prepare and submit to Congress a report containing -

(1) a description of the current sales, advertising, and marketing practices associated with cigarettes and smokeless tobacco products; and

(2) such recommendations for legislation and administrative action as the Commission deems appropriate.

SEC. 117. EXPORTS.

Packages of cigarettes or smokeless tobacco products manufactured, imported, or packaged -

(1) for export from the United States; or

(2) for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States;

shall be exempt from the requirements of this subtitle, but such exemptions shall not apply to cigarettes or smokeless tobacco products manufactured, imported, or packaged for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States.

SEC. 118. REPEALS.

The following Acts are repealed:

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

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

Subtitle C - Restriction on Access to Tobacco Products

SEC. 121. REQUIREMENTS RELATING TO RETAILERS.

(a) Sales to Minors Prohibited . - No retailer may distribute a tobacco product to any individual who is under 18 years of age.

(b) Photo Identification . -

(1) Requirement . - Except as provided in paragraph (2), each retailer shall verify, by means of photographic identification containing the date of birth of the bearer, that no individual purchasing a tobacco product is under 18 years of age.

(2) Exception . - No verification under paragraph (1) is required for any individual who is at least 27 years of age.

(3) Location of products . - Except as provided in section 122(d), a retailer shall ensure that all tobacco products are located in areas where customers do not have access to the products.

(c) Face-to-Face Transactions . - Except as provided in section 122(c)(1), a retailer may sell tobacco products only in a direct, face-to-face exchange without the assistance of any electronic or mechanical device.

(d) Out-of-Package Distribution . - No retailer may break or otherwise open a tobacco product to sell or distribute to individuals portions of such product (including individual cigarettes or a number of cigarettes that is smaller than the quantity in the minimum package size, or any quantity of cigarette tobacco or smokeless tobacco that is smaller than the smallest package distributed by the retailer for individual consumer use).

(e) Retailer Compliance with Respect to Self-Service . - Each retailer shall ensure that all tobacco-related self-service displays, advertising, labeling, and other items that are located in the establishment of the retailer and that do not comply with the requirements of this title are removed or are brought into compliance with the requirements of this title.

SEC. 122. MANUFACTURE, SALE, AND DISTRIBUTION.

(a) Minimum Cigarette Package Size . - Except as otherwise provided in this section, No manufacturer, distributor, or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than 20 cigarettes.

(b) Prohibition on Sampling . - No manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of any tobacco product.

(c) Prohibition on Distribution Through Self-Service Modes of Sale . -

(1) Vending machines . - No manufacturer, distributor, or retailer may distribute or cause to be distributed any tobacco product through a vending machine.

(2) Other displays . - Except as provided in subsection (d)(1)(B), no manufacturer, distributor, or retailer may distribute or cause to be distributed any tobacco product through a self-service display.

(d) Permitted Self-Service Modes of Sale . -

(1) In general . - Notwithstanding this subtitle, the following methods of distributing tobacco products are permitted:

(A) Mail-order sales as provided in paragraph (2), except that mail-order redemption of coupons and the distribution of free samples through the mail shall be prohibited.

(B) Self-service displays that are located in facilities where the retailer ensures that no individuals under 18 years of age are present or permitted to enter at any time.

(2) Mail-order sales . -

(A) In general . - A manufacturer, distributor, or retailer may distribute or cause to be distributed tobacco product through mail-order sales only if such sales are subject to a procedure for verifying that no individual purchasing such products is under 18 years of age.

(B) Review by commissioner . - Not later than 2 years after the date of enactment of this Act, the commissioner shall review the verification procedures implemented under subparagraph (A) to determine whether individuals under 18 years of age are obtaining tobacco products through the mail. If the Commissioner determines that a significant number of underage individuals are obtaining such products through the mail, the Commissioner may promulgate regulations to ban the distribution of tobacco products through the mail.

Subtitle D - Licensing of Retail Tobacco Sellers

SEC. 131. ESTABLISHMENT OF PROGRAM.

(a) In General . - The Commissioner, after consultation with the Secretary, shall establish a program under which an entity would be required to obtain a State or local license to sell or otherwise distribute tobacco products directly to consumers.

(b) Prohibition on Distribution . - No entity shall sell or otherwise distribute tobacco products directly to consumers unless such entity has in effect a tobacco license issued or renewed in accordance with the laws of the State in which the products are to be sold or otherwise distributed.

(c) Eligibility of State for Payments . - To be eligible to receive a block grant under section 502, a State shall have in effect laws that meet the standards described in this subtitle that provide for the licensing of entities engaged in the sale or distribution of tobacco products directly to consumers and shall enforce such laws in accordance with section 133.

SEC. 132. REQUIREMENTS.

(a) Licensure and Notice . -

(1) In general . - The State shall require that each person engaged in the sale or distribution of tobacco products directly to consumers obtain a license that is issued by the State. A separate license shall be required for each place of business where tobacco products are distributed or sold at retail.

(2) Notice . - The State shall notify every person in the State who is engaged in the distribution at retail of tobacco products of the license requirement of this section and of the date by which such person shall have obtained a license in order to distribute such products.

(b) Fee . - The State may assess an annual licensing fee with respect to each entity that desires to obtain a license under subsection (a). Amounts derived from such fees shall be used to offset the administrative costs incurred by the State in issuing and renewing licenses under this subtitle.

(c) Application . -

(1) In general . - An entity shall prepare and submit to the State an application for a license (including the renewal of a license) under this section, on such form as the State may require, that shall set forth the name under which the applicant transacts or intends to transact business, the location of the place of business for which the license is to be issued, the street address to which all notices relevant to the license are to be sent (in this Act referred to as "notice address"), and any other identifying information that the State may require.

(2) Action by state . -

(A) In general . - The State shall issue or renew a license or deny an application for a license or the renewal of a license within 30 days of receiving a properly completed application and the licensing fee. The State shall provide notice to an applicant of an action on an application denying the issuance of a license or refusing to renew a license.

(B) Finding by state . - The State shall deny the issuance or renewal of a license upon an application if the State determines that the applicant has failed to comply with the requirements of this title.

(3) Scope and renewal . - Every license issued by the State shall be valid for a period determined by the State and shall be renewed upon application except as otherwise provided in this section.

SEC. 133. PENALTIES, REVOCATIONS AND SUSPENSIONS.

(a) Penalties . -

(1) Criminal penalties applicable to unlicensed sellers . - Any individual who sells or otherwise distributes tobacco products to a consumer without a tobacco license in effect as provided for in this subtitle shall be subject, under the applicable State law, to a fine of not less than \$1,000, or imprisonment of not less than 6 months, or both. With respect to any corporate employer of such an

individual, the corporation shall be subject to a fine of not more than \$50,000. (2) Civil penalties applicable to sellers in violation of license . -

(A) In general . - In addition to any criminal penalties that may be imposed under paragraph (1), a State may, in accordance with subsection (b), impose civil penalties on any entity that has sold or distributed tobacco products in the State in violation of the State tobacco licensing laws.

(B) Limitations . - The civil penalties that may be imposed under subparagraph (A) shall not exceed the following:

(I) For the first offense within any 2-year period, \$500, or a 3-day suspension of the tobacco license, or both.

(ii) For a second offense within any 2-year period, \$1,000, or a 7-day suspension of the tobacco license, or both.

(iii) For a third offense within any 2-year period, \$2,000, or a 30-day suspension of the tobacco license, or both.

(iv) For a fourth offense within any 2-year period, \$5,000, or a 6-month suspension of the tobacco license, or both.

(v) For a fifth offense within any 2-year period, \$10,000, or a 1-year suspension of the tobacco license, or both.

(vi) For a sixth and any subsequent offense within any 2-year period, \$25,000, or a 3-year revocation of the tobacco license.

(vii) For a tenth offense within any 2-year period, the permanent revocation of the tobacco license.

(b) Revocation and Suspensions . -

(1) Notice . - Upon a finding that a tobacco licensee has been determined by a court of competent jurisdiction to have violated a provision of State law under this subtitle during the license term, the State shall notify the licensee in writing, served personally or by registered mail at the principal place of business of the licensee, that any subsequent violation of such law at the same place of business may result in an administrative action to suspend the license for a period determined by the State in accordance with subsection (a)(2)(B).

(2) Suspension . - Upon finding that a further violation by the tobacco licensee has occurred involving the same place of business for which the license was issued and the licensee has been provided notice under paragraph (1), the State may initiate an administrative action to suspend the license for a period to be determined in accordance with subsection (a)(2)(B). If an administrative action to suspend a license is initiated, the State shall immediately notify the licensee, in writing at the principal place of business of the licensee, of the initiation of the action and the reasons therefore and permit the licensee an opportunity, at least 30 days after written notice is served personally or by

registered mail upon the licensee, to show why suspension of the license would be unwarranted or unjust.

(3) Revocation . - The State may initiate an administrative action to revoke a tobacco license that previously has been suspended under paragraph (2) if, during the 2-year period described in subsection (a)(2)(B), a further violation of this subtitle is committed after the suspension by the licensee involving the same place of business for which the license was issued. If an administrative action to revoke a license is initiated, the State shall immediately notify the licensee, in writing at the principal place of business of the licensee, of the initiation of the action and the reasons therefore and permit the licensee an opportunity, at least 30 days after written notice is served personally or by registered mail upon the licensee, to show why revocation of the license would be unwarranted or unjust.

(c) Judicial Review . - A tobacco licensee may seek judicial review of an action of the State suspending, revoking, denying, or refusing to renew a license under this section by filing complaint in a court of competent jurisdiction. A complaint shall be filed within 30 days after the date on which notice of the action involved is received by the licensee. The court shall review the evidence de novo.

SEC. 134. FEDERAL LICENSING OF MILITARY AND OTHER ENTITIES.

(a) In General . - The Commissioner, in consultation with the Secretary of Defense, Secretary of State, and other appropriate Federal officials, shall establish and implement a Federal tobacco licensing program to be applied to entities that sell or distribute tobacco products -

(1) on any military installation (as defined in section 2801(c)(2) of title X, United States Code);

(2) in any United States embassy;

(3) in any facility owned and operated by the Federal Government either in the United States or in a foreign country;

(4) in any duty-free shop located within the United States; or

(5) through any other Federal entity or on any other Federal property as determined appropriate by the Commissioner.

(b) Requirements of Program . - The program established under subsection (a) shall apply requirements (including those for penalties, suspensions, and revocations) similar to those required to be implemented by States under this subtitle.

(c) Indian Tribes and Tribal Lands . - For purposes of applying and enforcing the provisions of this subtitle to entities that sell or otherwise distribute tobacco products on Indian reservations (as defined in section 403(9) of the Indian Child Protection and Family Violence Prevention Act (25U.S.C. 3202(9))), an Indian tribe or tribal organization (as such terms are defined in section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b)) shall be treated as a State.

Subtitle E - Regulation of Tobacco Product Development and Manufacturing

SEC. 141. REFERENCE.

Whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

SEC. 142. TREATMENT OF TOBACCO PRODUCTS AS DRUGS.

(a) Definitions . -

(1) Drug . -

(A) In general . - Section 201(g)(1) (21 U.S.C. 321(g)(1)) is amended by inserting before the first period “; and (E) tobacco products”.

(B) Exception . - Section 201(p) of such Act is amended in paragraphs (1) and (2) by striking “(except a new animal drug)” and inserting “(except a tobacco product, a new animal drug)”.

(2) Devices . - Section 201(h) (21 U.S.C. 321(h)) is amended by adding at the end the following: “Such term includes a tobacco product which shall be classified as a class II device.”.

(3) Other definitions . - Section 201 (21 U.S.C. 321) is amended by adding at the end thereof the following new paragraphs:

“(ii) Tobacco Additive . - The term ‘tobacco additive’ means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in the substance becoming a component of, or otherwise affecting the characteristics of, any tobacco product, including any substance that may have been removed from the tobacco product and then readded in the substance’s original or modified form.

“(jj) Tar . - The term ‘tar’ means mainstream total articulate matter minus nicotine and water.

“(kk) Tobacco Product . - The term ‘tobacco product’ has the meaning given such term in section 100(22) of the Universal Tobacco Settlement Act.”.

(b) Enforcement . - Section 301 (21 U.S.C. 331) is amended by adding at the end thereof the following new subsection:

“(x) The manufacture, labeling, distribution, and sale of any adulterated or misbranded tobacco product in violation of -

“(1) regulations issued pursuant to section 903;

“(2) title I of the Universal Tobacco Settlement Act.”.

(c) Adulterated or Misbranded Provisions . -

(1) Adulteration . - Section 501 (21 U.S.C. 351) is amended by adding at the end the following:

“(j) If it is a tobacco product and it does not comply with the provisions of chapter IX.”.

(2) Misbranding . - Section 502 (21 U.S.C. 352) is amended by adding at the end the following:

“(u) If it is a tobacco product and its labeling does not comply with the provisions of chapter IX and the provisions of title I of the Universal Tobacco Settlement Act.”.

(d) Classification of Tobacco Products . - Section 512(a)(1)(B) (21 U.S.C. 360c(a)(1)(B)) is amended by adding at the end the following: “For purposes of this Act, a tobacco product shall be classified as a class II device with performance standards applicable under chapter IX.”.

SEC. 143. HEALTH AND SAFETY REGULATION OF TOBACCO PRODUCTS.

The Act (21 U.S.C. 301 et seq.) is amended -

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901, 902, 903, 904, and 905 as sections 1001, 1002, 1003, 1004, and 1005, respectively; and

(3) by adding after chapter VIII the following new chapter:

Subtitle F - Compliance Plans and Corporate Culture

SEC. 151. COMPLIANCE PLANS. (a) In General . - Not later than 1 year after the date of enactment of this Act, and annually thereafter, each manufacturer of a tobacco product shall prepare and submit to the Secretary a plan to ensure that the manufacturer complies with all applicable Federal, State, and local laws with respect to the manufacture and distribution of tobacco products.

(b) Requirements . - A compliance plan submitted under subsection (a) shall -

(1) contain the assurances of the manufacturer that tobacco products will only be manufactured and distributed in accordance with this Act and the amendments made by this Act;

(2) identify methods to achieve the goals of -

(A) reducing the access of individuals under 18 years of age to tobacco products; and

(B) reducing the incidence of the underage consumption of tobacco products;

(3) provide for the implementation of internal incentives for achieving the reductions described in paragraph (2);

(4) provide for the implementation of internal incentives for the development of tobacco products with a reduced health risk;

(5) contain a description of the compliance programs implemented under section 152 and the effectiveness of such programs; and

(6) contain such other information as the Secretary may require.

SEC. 152. COMPLIANCE PROGRAMS. (a) In General . - Not later than 1 year after the date of enactment of this Act, each manufacturer of a tobacco product shall establish and implement one or more compliance programs designed to ensure the compliance of the manufacturer with Federal, State, and local laws that limit the access of individuals under 18 years of age to tobacco products.

(b) Requirements . - A compliance program established under subsection (a) shall -

(1) implement standards and procedures to be adhered to by employees and agents that are designed to reduce the incidence of violations of the laws described in subsection (a);

(2) provide for the assignment to 1 or more specific corporate executives of the overall responsibility for ensuring that the manufacturer complies with the standards and procedures applicable under this Act;

(3) ensure that due care is taken by the corporate executives designated under paragraph (2) to avoid delegating substantial discretionary authority to individuals who the executives know (or should have known through the exercise of due diligence) have a propensity to disregard corporate policy;

(4) include procedures to inform all employees and agents of the relevant standards and procedures applicable to the manufacturer and the tobacco products manufactured under this Act, including procedures for the implementation of training programs or the dissemination of informational materials;

(5) provide for the conduct of internal audits, and the establishment of hotlines and other measures to promote compliance with the laws described in subsection (a);

(6) provide for the application of appropriate disciplinary mechanisms and measures to employees who are directly or indirectly violating the laws described in subsection (a) or otherwise not complying with this Act;

(7) include measures to respond appropriately where violations of laws described in subsection(a) are alleged to have occurred or are occurring;

(8) include the promulgation of corporate policy statements that express and explain the commitment of the manufacturer to -

- (A) compliance with applicable Federal, State, and local laws;
- (B) reducing the use of tobacco products by individuals who are under 18 years of age; and
- (c) developing tobacco products that pose a reduced risk to the health of the user;
- (9) provide for the designation of a specific corporate executive to serve as the compliance officer to promote efforts to fulfill the commitment of the manufacturer;
- (10) include provisions for compiling reports on compliance with this Act and the laws described in paragraph (1) and including those reports in materials provided to stockholders; and
- (11) include any other measures determined appropriate by the Secretary.

(c) Reporting of Noncompliance . - Under the compliance program of a manufacturer, the manufacturer's employees shall be encouraged to report to the compliance officer any known or alleged violations of this Act (or an amendment made by this Act), including violations by distributors or retailers. The compliance officer shall furnish a copy of all such reports to the Secretary for reference to the appropriate Federal or State enforcement authority.

(d) Retail Establishments . - As part of the compliance program established under this section, a manufacturer shall carry out efforts to encourage and assist (including retail compliance checks and financial incentives) retailers of the tobacco products manufactured by the manufacturer in compliance with the Federal, State, and local laws described in subsection (a).

SEC. 153. WHISTLEBLOWER PROTECTIONS.

(a) Prohibition of Reprisals . - An employee of any manufacturer, distributor, or retailer of a tobacco product may not be discharged, demoted, or otherwise discriminated against (with respect to compensation, terms, conditions, or privileges of employment) as a reprisal for disclosing to an employee of the Food and Drug Administration, the Department of Justice, or any State or local regulatory or enforcement authority, information relating to a substantial violation of law related to this Act (or an amendment made by this Act) or a State or local law enacted to further the purposes of this Act.

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

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

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

(2) pay compensatory damages; or

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

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

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

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

SEC. 154. PROVISIONS RELATING TO LOBBYING.

(a) Definitions . - For purposes of this section, the terms "lobbying activities", "lobbying firm", and "lobbyist" have the meanings given such terms by section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602).

(b) General Requirement . - A manufacturer, distributor, or retailer of a tobacco product shall require that any lobbyist or lobbying firm employed or retained by the manufacturer, distributor, or retailer, or any other individual who performs lobbying activities on behalf of the manufacturer, distributor, or retailer, as part of the employment or retainer agreement refrain from supporting or opposing any Federal or State legislation, or otherwise supporting or opposing any governmental action on any matter without the express consent of the manufacturer, distributor, or retailer.

(c) Additional Agreements . - An individual shall not be employed or retained to perform lobbying activities on behalf of a manufacturer, distributor, or retailer of a tobacco product unless such individual enters into a signed agreement with the manufacturer, distributor, or retailer that acknowledges that the individual -

(1) is fully aware of, and will fully comply with, all applicable laws and regulations relating to the manufacture and distribution of tobacco products;

(2) has reviewed and will fully comply with the requirements of this Act (and the amendments made by this Act);

(3) has reviewed and will fully comply with any consent decree entered into under title VI as that decree applies to the manufacturer, distributor, or retailer involved; and

(4) has reviewed and will fully comply with the business conduct policies and other applicable policies and commitments (including those relating to the prevention of underage tobacco use) of the manufacturer, distributor, or retailer involved.

SEC. 155. TERMINATION OF CERTAIN ENTITIES.

(a) Requirement . - Not later than 90 days after the date of enactment of this Act, manufacturers, distributors, or retailers of tobacco products shall provide for the termination of the activities of the

Tobacco Institute and the Council for Tobacco Research, U.S.A. and the Institute and Council shall be dissolved.

(b) Establishment of Other Entities . -

(1) Authority . - Manufacturers, distributors, or retailers of tobacco products may form or participate in any trade organization or other industry association only in accordance with this subsection.

(2) Board of directors . - A trade organization or other industry association formed or participated in under this subsection shall -

(A) shall be administered by an independent board of directors, of which -

(i) during the 10-year period beginning on the date on which the organization or association is formed or first participated in under this subsection, not less than 20 percent (at least 1 member) shall be individuals who are not current or former directors, officers, or employees of an entity terminated under subsection (a) or of the members of the association or organization; and

(ii) during the life of the association or organization, no member shall be a director of any of the members of the association or organization;

(B) be administered by officers who are appointed by the board of directors and who are not otherwise employed by any of the members of the association or organization; and

(c) be provided with legal advice by a legal adviser who is appointed by the board of directors and who is not otherwise employed by any of the members of the association or organization.

(3) By-laws . - A trade organization or other industry association formed or participated in under this subsection shall adopt by-laws that -

(A) prohibit meetings by members of the association or organization who are competitors in the tobacco industry except under the sponsorship of the association or organization;

(B) require that every meeting of the board of directors, or a subcommittee of the board or other general committee, proceed under and strictly adhere to an agenda that is approved by the legal counsel and circulated in advance; and

(c) require the taking of minutes that describe the substance of any meeting of the members of the association or organization and the maintenance of such minutes in the records of the association or organization for a period of 5 years following the meeting.

(c) Department of Justice . -

(1) Oversight . - The Attorney General and, as appropriate, State antitrust authorities shall exercise oversight authority over any association or organization to which subsection (b) applies.

(2) Access and inspection . - During the 10-year period beginning on the date on which an association or organization to which subsection (b) applies is formed, the Attorney General and, as appropriate State antitrust authorities shall, upon the provision of reasonable notice to the legal counsel of the association or organization, have access to -

(A) all books, records, meeting agenda and minutes, and other documents maintained by the association or organization; and

(B) the directors, officers, and employees of the association or organization for interview purposes.

(3) Multi-state committee . - Two or more States, acting through the attorney general of each such State, may establish a multi-State oversight committee to assist the Attorney General in exercising the oversight responsibilities under this section.

(4) Confidentiality . - The Attorney General shall promulgate regulations to provide that materials provided under paragraph (2) are protected with appropriate confidentiality protections.

(d) Antitrust Exemptions . - The provisions of the Sherman Act (15 U.S.C. 1 et seq.), the Clayton act (29 U.S.C. 52 et seq.), and any other Federal or State antitrust laws shall not apply to an association or organization to which subsection (b) applies.

SEC. 156. ENFORCEMENT.

(a) Assessment . -

(1) In general . - The Secretary may assess a civil penalty against any manufacturer of a tobacco product of up to \$25,000 per day of violation whenever, on the basis of any available information, the Secretary finds that such manufacturer has violated or is violating any requirement of this subtitle.

(2) Limitation . - The authority of the Secretary under this subsection shall be limited to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred not more than 12 months prior to the initiation of the administrative action, except where the Secretary and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for action.

(3) Judicial review . - Any determination by the Administrator and the Attorney General under paragraph (2) shall not be subject to judicial review.

(b) Procedure . -

(1) In general . - A civil penalty under subsection (a) shall be assessed by the Secretary by an order made after an opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5 of the United States Code. The Secretary shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Secretary shall give written notice to the manufacturer against whom the assessment is being made of the Secretary's

proposal to issue such an order and provide such manufacturer with an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such manufacturer.

(2) Modifications . - The Secretary may compromise, modify, or remit, with or without conditions, any penalty which may be imposed under this section.

(c) Field Citation Program . -

(1) Implementation . - The Secretary may provide for the implementation, after consultation with the Attorney General and the States, of a field citation program through regulations establishing appropriate minor violations of this subtitle for which field citations, assessing civil penalties not to exceed \$5,000 per day of violation, may be issued by officers or employees designated by the Secretary.

(2) Hearing . - Any manufacturer to which a field citation is assessed may, within a reasonable time as prescribed by the Secretary through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5 of the United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(3) No defense . - Payment of a civil penalty required by a field citation under this paragraph shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the subtitle, if the violation continues.

(d) Judicial Review . -

(1) Right . - Any manufacturer against whom a civil penalty is assessed under subsection (c) or to which a penalty order is issued under subsection (a) may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred or in which the principal place of business of the manufacturer is located, by filing in such court within 30 days following the date the penalty order becomes final under subsection paragraph (b), the assessment becomes final under subsection (c), or a final decision following a hearing under subsection (c) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Secretary and the Attorney General.

(2) Filing . - Within 30 days after a filing under paragraph (1), the Secretary shall file in the court involved a certified copy, or certified index, as appropriate, of the record on which the penalty order or assessment was issued.

(3) Action by court . - A court shall not set aside or remand a penalty order or assessment under this section unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion.

(4) Limitation . - A penalty order or assessment under this section shall not be subject to review by any court except as provided in this subsection. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(e) Failure to Pay . -

(1) In general . - If any manufacturer fails to pay an assessment of a civil penalty or fails to comply with an penalty order under this section -

(A) after the order or assessment has become final; or

(B) after a court, in an action brought under subsection (d), has entered a final judgment in favor of the Secretary;

the Secretary shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review.

(2) Enforcement expenses . - Any manufacturer who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such manufacturer's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(f) Scarlet Letter Advertising. -

TITLE II - REDUCTION IN UNDERAGE TOBACCO USE

SEC. 201. PURPOSE.

It is the purpose of this title to encourage the achievement of dramatic and immediate reductions in the number of underage consumers of tobacco products through the imposition of substantial financial surcharges on manufacturers if certain underage tobacco-use reduction targets are not met.

SEC. 202. DETERMINATION OF UNDERAGE USE BASE PERCENTAGES.

(a) Cigarettes . - For purposes of this section, the underage use base percentage for cigarettes shall be a percentage determined by the Secretary, weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, based on -

(1) the average of the percentages of 12th graders (individuals who are 16 or 17 years of age) who used cigarette products on a daily basis for each of the calendar years 1986 through 1996;

(2) the average of the percentages of 10th graders (individuals who are 14 or 15 years of age) who used cigarette products on a daily basis for each of the calendar years 1991 through 1996; and

(3) the average of the percentages of 8th graders (individuals who are 13 years of age) who used cigarette products on a daily basis for each of the calendar years 1991 through 1996. (b) Smokeless Tobacco . - For purposes of this section, the underage use base percentage for smokeless tobacco products shall be a percentage determined by the Secretary, weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the bureau of the Census, based on -

(1) the average of the percentages of 12th graders (individuals who are 16 or 17 years of age) who used smokeless tobacco products on a daily basis in 1996;

(2) the average of the percentages of 10th graders (individuals who are 14 or 15 years of age) who used smokeless tobacco products on a daily basis in 1996; and

(3) the average of the percentages of 8th graders (individuals who are 13 years of age) who used smokeless tobacco products on a daily basis in 1996. (c) Use of Certain Data or Methodology . - For purposes of determining the percentages under paragraphs (1) through (3) of subsections (a) and (b), the Secretary shall use the data contained in the National High School Drug Use Survey entitled Monitoring the Future by the University of Michigan or such other comparable index, as determined appropriate by the Secretary after notice and an opportunity for a hearing, that utilizes methodology identical to that used by the University of Michigan in such survey.

SEC. 203. ANNUAL DAILY INCIDENCE OF UNDERAGE USE OF TOBACCO PRODUCTS.

(a) Annual Determination . - Not later than the expiration of the 5-year period beginning on the date of enactment of this Act, and annually thereafter, the Secretary shall determine the average annual incidence of the daily use of tobacco products by individuals who are under 18 years of age.

(b) Cigarettes . - With respect to cigarette products, a determination under subsection (a) for a year shall be based on the percentage, as weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, of -

(1) 12th graders (individuals who are 16 or 17 years of age) who used cigarette products on a daily basis during the year involved;

(2) 10th graders (individuals who are 14 or 15 years of age) who used cigarette products on a daily basis during the year involved; and

(3) 8th graders (individuals who are 13 years of age) who used cigarette products on a daily basis during the year involved.

(c) Smokeless Tobacco . - With respect to smokeless tobacco products, a determination under subsection (a) for a year shall be based on the percentage, as weighted by the relative population of

the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, of -

(1) 12th graders (individuals who are 16 or 17 years of age) who used smokeless tobacco products on a daily basis during the year involved;

(2) 10th graders (individuals who are 14 or 15 years of age) who used smokeless tobacco products on a daily basis during the year involved; and

(3) 8th graders (individuals who are 13 years of age) who used cigarette smokeless tobacco on a daily basis during the year involved.

(d) Use of Certain Data or Methodology . -

(1) In general . - For purposes of determining the percentages under paragraphs (1) through (3) of subsections (b) and (c), the Secretary shall use the data contained in the National High School Drug Use Survey entitled Monitoring the Future by the University of Michigan (if such survey is still being undertaken) or such other comparable index, as determined appropriate by the Secretary after notice and an opportunity for a hearing, that utilizes methodology identical to that used by the University of Michigan in such survey.

(2) Alteration of methodology . - If the Secretary determines that the methodology used by the University of Michigan in the survey referred to in paragraph (1) has been altered in a material manner from the methodology used during the period from 1986 to 1996 (including by altering States or regions on which the survey is based), the Secretary, after notice and an opportunity for a hearing, shall use percentages based on an index developed by the Secretary that utilizes methodology identical to that used by the University of Michigan in such survey.

SEC. 204. REQUIRED REDUCTION IN UNDERAGE TOBACCO USE.

(a) In General . - For purposes of assessing surcharges under section 205, the Secretary shall determine whether the required percentage reduction in the underage use of tobacco products for a year (based on the tables contained in subsection (b)) has been achieved for the year involved. Such determination shall be based on -

(1) with respect to cigarette products, the average annual incidence of the daily use of tobacco products by individuals who are under 18 years of age for the year involved (as determined under section 203(b)) as compared to the underage use base percentage for cigarette products (as determined under section 202(a)); and

(2) with respect to smokeless tobacco products, the average annual incidence of the daily use of smokeless tobacco products by individuals who are under 18 years of age for the year involved (as determined under section 203(c)) as compared to the underage use base percentage for smokeless tobacco products (as determined under section 202(b)).

(b) Percentage Reduction in Underage Use of Tobacco Products . - For purposes of subsection(a), the required percentage reduction in the underage use of tobacco products with respect to each tobacco product shall be determined according to the following tables:

(1) Cigarettes . -

“Calender year after enactment -

The percentage decrease in the use of cigarette products -

Fifth 30

Sixth 30

Seventh 50

Eighth 50

Ninth 50

Tenth and thereafter 60.

(2) Smokeless tobacco products . -

“Calender year after enactment -

The percentage decrease in the use of smokeless tobacco products -

Fifth 25

Sixth 25

Seventh 35

Eighth 35

Ninth 35

Tenth and thereafter 45 .

SEC. 205. APPLICATION OF SURCHARGES.

(a) In General . - If the Secretary determines that the percentage reduction in the underage use of tobacco products for a year has not been achieved as required under section 204, the Secretary shall impose a surcharge on the manufacturers of the tobacco products involved.

(b) Amount of Surcharge . -

(1) In general . - The amount of any surcharge to be imposed under this section for a calendar year shall be equal to the product of -

(A) \$80,000,000; and

(B) the number of applicable surcharge percentage points as determined under subsection (c).

(2) Adjustments . - The amount applicable under paragraph (1) shall be annually adjusted by the Secretary based on -

(A) with respect to subparagraph (A) of such paragraph -

(I) the proportional percentage increase or decrease, as compared to calendar year 1995, in the population of individuals residing in the United States who are at least 13 years of age but less than 18 years of age;

(ii) the proportional percentage increase or decrease, as compared to calendar year 1996, in the average profit per unit (measured in cents and weighted by annual sales) earned by tobacco manufacturers for the tobacco product involved (as determined by the Secretary through a contract with a nationally recognized accounting firm having no connection to tobacco manufacturers); and

(B) any methodology utilized to avoid the double counting of underage individuals whose tobacco use has previously resulted in the imposition of a surcharge, limited to the extent that there were not other underage users of tobacco in such previous years for whom a surcharge was not paid because of the limitation contained in section 206. (3) Profit per unit . - For purposes of paragraph (2)(A)(ii), the average profit per unit for calendar 1996 shall be determined using the operating profit reported by manufacturers to the Securities and Exchange Commission.

(c) Determination of Applicable Surcharge Percentage Points . -

(1) In general . - Except as provided in paragraph (2), with respect to a calendar year, the applicable surcharge percentage points shall be equal to the percentage point difference between -

(A) the required percentage reduction in the underage use of the tobacco product involved for the year (based on the tables in section 204(b)); and

(B) the number of percentage points by which the average annual incidence of the daily use of the tobacco products involved by individuals who are under 18 years of age for the year (as determined under section 203) is less than the underage use base percentage for such products (as determined under section 202).

(2) Adjustment . - If for any calendar year the Secretary determines that the average annual incidence of the daily use of the tobacco products involved by individuals who are under 18 years of age (as determined under section 203) is greater than the underage use base percentage for such

products (as determined under section 202), the applicable surcharge percentage point shall be equal to -

(A) the percentage point amount determined under paragraph (1)(A); and

(B) the number of percentage points by which the average annual incidence of the daily use of the tobacco products involved by individuals who are under 18 years of age (as determined under section 203) is greater than the underage use base percentage for such products (as determined under section 202).

(3) Type of product . - Separate determinations shall be made under this section for cigarette products and smokeless tobacco products.

(d) Limitation . - The total amount of surcharges imposed with respect to each type of tobacco product (cigarette products or smokeless tobacco products) under this section shall not exceed \$2,000,000,000 (adjusted each year by the Secretary to account for inflation) for any calendar year.

(e) Joint and Several Obligation . - Any surcharge imposed under this section with respect to a tobacco product (cigarette products or smokeless tobacco products) shall be the joint and several obligation of all manufacturers of such product as allocated by the market share of each such manufacturer with respect to such product. The market share of each manufacturer for each such product shall be based on the actual Federal excise tax payments made by such manufacturers for each such product under the Internal Revenue Code of 1986. (f) Assessment . - Not later than May 1 of each year in which a surcharge will be imposed under this section, the Secretary shall assess to each manufacturer the amount for which such manufacturer is obligated. Not later than July 1 of any year in which a manufacturer receives an assessment under this section, the manufacturer shall pay such assessment in full or be subject to such interest on such amount as the Secretary may by regulation prescribe.

(g) Use of Amounts . - Amounts received under this section shall be used as provided for in section 517. (h) Prohibition . - No stay or other injunctive relief may be granted by the Secretary or any court that has the effect of enjoining the imposition and collection of the surcharges to be applied under this section.

SEC. 206. ABATEMENT PROCEDURES.

(a) Petitions . - Upon payment by a manufacturer of the amount assessed to the manufacturer under section 205(f), the manufacturer may submit a petition to the Secretary for an abatement of the assessment. A notice of such abatement petition shall be submitted to the attorney general of each State.

(b) Hearing . - The Secretary shall provide for the conduct of a hearing on an abatement petition received under subsection (a) pursuant to the procedures described in sections 554, 556, and 557 of title 5, United States Code. The attorney general of any State shall be permitted to be heard at any hearing conducted under this subsection.

(c) Burden . - The burden at any hearing under subsection (b) shall be on the manufacturer to prove, by a preponderance of the evidence, that the manufacturer should be granted the abatement.

(d) Basis of Decision . - Any decision regarding a petition for an abatement under this section shall be based on a determination as to whether -

(1) the manufacturer has acted in good faith and in full compliance with this Act (and any amendment made by this Act) and any regulations or State or local laws promulgated in furtherance of this Act;

(2) the manufacturer has pursued all reasonably available measures to attain the reductions;

(3) there is any evidence of any direct or indirect action by the manufacturer to undermine the achievement of the reductions required under section 204 or to undermine any other provision of this Act (or amendment); and

(4) the manufacturer has taken (or failed to take) any other action as determined appropriate by the Secretary.

(e) Amount . - Upon a determination granting an abatement under this section, the Secretary shall order the abatement of not to exceed 75 percent of the amount paid by the manufacturer, together with interest that may have accrued on such amount during the period between the date on which payment by the manufacturer was made and the date on which the abatement order was granted. Such interest shall be equal to that provided for the average 52-week Treasury Bill during the period involved.

(f) Aggrieved Parties . - Any manufacturer or attorney general of any State that is aggrieved by an abatement that is granted under this section may seek judicial review of the abatement decision within 30 days of the date of such decision in the Court of Appeals for the District of Columbia Circuit. Review in such cases shall be subject to the procedures described in sections 701 through 706 of title 5, United States Code.

(g) Prohibition . - A manufacturer may not file a petition under subsection (a) until such time as the manufacturer has fully paid the Secretary the amount assessed to the manufacturer under section 205(f).

TITLE III - STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

SEC. 301. DEFINITIONS.

In this title -

(1) Administrator . - The term "Administrator" means the Administrator of the Occupational Safety and Health Administration.

(2) Public facility . -

(A) In general . - The term "public facility" means any building regularly entered by 10 or more individuals at least 1 day per week, including any such building owned by or leased to a Federal, State, or local government entity. Such term shall not include any building or portion thereof regularly used for residential purposes.

(B) Exclusions . - Such term does not include a building which is used as a restaurant (other than a fast food restaurant), bar, private club, hotel guest room, casino, bingo parlor, tobacco merchant, or prison.

(c) Fast food restaurant . - The term "fast food restaurant" means any restaurant or chain of restaurants that primarily distributes food through a customer pick-up (either at a counter or drive-through window). The Administrator of the Occupational Safety and Health Administration may promulgate regulations to clarify this subparagraph to ensure that the intended inclusion of establishments catering largely to individuals under 18 years of age is achieved.

(3) Responsible entity . - The term "responsible entity" means, with respect to any public facility, the owner of such facility except that, in the case of any such facility or portion thereof which is leased, such term means the lessee.

SEC. 302. SMOKE-FREE ENVIRONMENT POLICY.

(a) Policy Required . - In order to protect children and adults from cancer, respiratory disease, heart disease, and other adverse health effects from breathing environmental tobacco smoke, the responsible entity for each public facility shall adopt and implement at such facility a smoke-free environment policy which meets the requirements of subsection (b).

(b) Elements of Policy . -

(1) In general . - Each smoke-free environment policy for a public facility shall -

(A) prohibit the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the facility and on facility property within the immediate vicinity of the entrance to the facility; and

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

(2) Exception . - The smoke-free environment policy for a public facility may provide an exception to the prohibition specified in paragraph (1) for 1 or more specially designated smoking areas within a public facility if such area or areas meet the requirements of subsection (c).

(c) Specially Designated Smoking Areas . - A specially designated smoking area meets the requirements of this subsection if -

(1) the area is ventilated in accordance with specifications promulgated by the Administrator that ensure that air from the area is directly exhausted to the outside and does not recirculate or drift to other areas within the public facility;

(2) the area is maintained at negative pressure, as compared to adjoined nonsmoking areas, as determined under regulations promulgated by the Administrator; and

(3) nonsmoking individuals do not have to enter the area for any purpose while smoking is occurring in such area.

Cleaning and maintenance work shall be conducted in such area only while no smoking is occurring in the area.

SEC. 303. CITIZEN ACTIONS.

(a) In General . - An action may be brought to enforce the requirements of this title by any aggrieved person, any State or local government agency, or the Administrator.

(b) Venue . - Any action to enforce this title may be brought in any United States district court for the district in which the defendant resides or is doing business to enjoin any violation of this title or to impose a civil penalty for any such violation in the amount of not more than \$5,000 per day of violation. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce this title and to impose civil penalties under this title.

(c) Notice . - An aggrieved person shall give any alleged violator notice of at least 60 days prior to commencing an action under this section. No action may be commenced by an aggrieved person under this section if such alleged violator complies with the requirements of this title within such 60-day period and thereafter.

(d) Costs . - The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing plaintiff, whenever the court determines such award is appropriate.

(e) Penalties . - The court, in any action under this section to apply civil penalties, shall have discretion to order that such civil penalties be used for projects which further the policies of this title. The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects.

SEC. 304. PREEMPTION.

Nothing in this title shall preempt or otherwise affect any other Federal, State or local law which provides protection from health hazards from environmental tobacco smoke.

SEC. 305. REGULATIONS.

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

SEC. 306. EFFECTIVE DATE.

The provisions of this title shall take effect on the date that is 1 year after the date of enactment of this Act.

TITLE IV - NATIONAL TOBACCO SETTLEMENT TRUST FUND

SEC. 401. ESTABLISHMENT OF TRUST FUND.

(a) Creation . -

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

(2) Trustees . - The trustees of the Trust Fund shall be the Commissioner and the Secretary.

(b) Transfers . - There are hereby appropriated and transferred to the Trust Fund -

(1) amounts repaid or recovered under section 205, including interest thereon;

(2) amounts equivalent to amounts received under section 402; and

(3) amounts paid as fines or penalties, including interest thereon, under section 403.

(c) Repayable Advances . -

(1) Authorization . - There are authorized to be appropriated to the Trust Fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures described in subsection (d).

(2) Repayment with interest . - Repayable advances made to the Trust Fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determined that moneys are available in the Trust Fund for such purposes.

(3) Rate of interest . - Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month proceeding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the anticipated period during which the advance will be outstanding.

(d) Expenditures From Trust Fund . - Amounts in the Trust Fund shall be available in each calendar year, as provided by appropriations Act, as follows:

(1) With respect to -

(A) the first and second years following the establishment of the Trust Fund, not less than \$2,500,000,000 each year;

(B) the third year following the establishment of the Trust Fund, not less than \$3,500,000,000;

(c) the fourth year following the establishment of the Trust Fund, not less than \$4,000,000,000;

(D) the fifth year following the establishment of the Trust Fund, not less than \$5,000,000,000; and

(E) the sixth year following the establishment of the Trust Fund, and each year thereafter, not less than \$2,500,000,000; of the amounts available in the Trust Fund shall be made available to the Secretary to make grants to States to carry out subtitle A of title V.

(2) With respect to each of the first 4 years following the establishment of the Trust Fund, not less than \$1,000,000,000, and with respect to each year thereafter, not less than \$1,500,000,000, of the amounts available in the Trust Fund shall be made available to the Secretary to carry out the National Smoking Cessation Program under section 511.

(3) With respect to each of the first 3 years following the establishment of the Trust Fund, not less than \$125,000,000, and with respect to each year thereafter, not less than \$225,000,000, of the amounts available in the Trust Fund shall be made available to the Secretary to carry out the National Reduction in Tobacco Usage Program under section 512.

(4) Not less than \$500,000,000 of the amounts available in the Trust Fund each year shall be made available to the Tobacco-Free Education Board to carry out activities under section 513.

(5) With respect to each of the first 10 years following the establishment of the Trust Fund, not less than \$75,000,000 of the amounts available in the Trust Fund shall be made available to the Secretary to carry out the National Event Sponsorship Program under section 514.

(6) With respect to each of the first 2 years following the establishment of the Trust Fund, not less than \$75,000,000, with respect to the third such year, not less than \$100,000,000, and with respect to each year thereafter, not less than \$125,000,000, of the amounts available in the Trust Fund shall be made available to the Secretary to carry out the National Community Action Program under section 515.

(7) Not less than \$100,000,000 of the amounts available in the Trust Fund each year shall be made available to the Secretary to carry out the National Cessation Research Program under section 516.

(8) Not less than \$300,000,000 of the amounts available in the Trust Fund each year shall be made available to the Commissioner as reimbursement for the costs incurred by the Food and Drug Administration in implementing and enforcing requirements relating to tobacco products.

(9) Not less than \$560,000,000 of the amounts available in the Trust Fund each year shall be made available to the Synergy Victim Trust Board to carry out the Synergy Victim Trust Fund under section 517.

(10) Not less than the amount collected under section 205 and available each year shall be made available to the Secretary for use as provided for in section 517. SEC. 402. LIABILITY OF

INDUSTRY SOURCES. (a) Definition . - As used in this subtitle, the term "industry sources" means all entities which are signatories to the National Tobacco Control Protocol under section 612.

(b) Payments . -

(1) Initial payment . - Each industry source shall pay to the Trust Fund on the date of enactment of this Act, an amount that bears the same ratio to \$11,000,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) bears to the relevant domestic tobacco product unit volume of all industry sources for 1996.

(2) Annual payments . - Each industry source shall pay to the Trust Fund for each calendar year, beginning on December 31 of the year following the year in which this Act is enacted, and each December 31 thereafter, an annual payment equal to -

(A) with respect to the first year for which payments are to be made, an amount that bears the same ratio to \$9,060,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) for the year involved bears to the relevant domestic tobacco product unit sales volume of all industry sources for such year;

(B) with respect to the second year for which payments are to be made, an amount that bears the same ratio to \$10,060,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) for the year involved bears to the relevant domestic tobacco product unit sales volume of all industry sources for such year;

(c) with respect to the third year for which payments are to be made, an amount that bears the same ratio to \$12,060,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) for the year involved bears to the relevant domestic tobacco product unit sales volume of all industry sources for such year;

(D) with respect to the fourth year for which payments are to be made, an amount that bears the same ratio to \$14,560,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) for the year involved bears to the relevant domestic tobacco product unit sales volume of all industry sources for such year; and

(E) with respect to each of the fifth through 25th years for which payments are to be made, an amount that bears the same ratio to \$15,560,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) for the year involved bears to the relevant domestic tobacco product unit sales volume of all industry sources for such year.

(3) Relevant domestic tobacco product unit sales volume . -

(A) In general . - For purposes of this subsection, the relevant domestic tobacco product unit sales volume of an industry source for a year shall be determined by the Commissioner based on data submitted by industry sources and other appropriate data.

(4) Adjustments . -

(A) Volume decrease . - If the Commissioner makes a determination under paragraph (3)(B) that the total relevant domestic tobacco product unit sales volume has decreased, the Commissioner shall in subsequent years, make determinations as to sales volume based solely on adult use.

(B) Increase in profits . -

(I) In general . - With respect to an industry source that experiences a decrease in the amount owed under paragraph (2) for a year as compared to the previous year, the industry source shall be subject to an increase in such amount (as provided for under clause (ii)) if the Commissioner determines that the net operating profits of the source derived from domestic sales of tobacco products has increased over that of the previous year.

(ii) Amount of increase . - The amount by which the amount owed by an industry source is increased under clause (I) shall be equal to 25 percent of the amount of the decrease involved.

(c) Inflation . - Each of the amounts described in subparagraphs (B) through (E) of paragraph (2) shall be increased by 3 percent each year, or adjusted each year to reflect the increase in the Consumer Price Index for all urban consumers (as published by the Bureau of Labor Statistics) from the year previous to the year for which the adjustment is being applied, whichever is greater.

(c) Affect of Bankruptcy . - Section 507(a) of title 11, United States Code, is amended by inserting after paragraph (9) the following:

“Tenth, payments required to be paid into the National Tobacco Settlement Trust Fund under section 402 of the Universal Tobacco Settlement Act.”

(d) Pass-Through . - An industry source that is required to make payments under this section shall annually adjust the prices of the tobacco products sold by such source to reflect the amounts of such payments.

(e) Tax Treatment of Payments . - For purposes of section 162 of the Internal Revenue Code of 1986, any payment to the Tobacco Settlement Trust Fund under section 401 shall be considered to be an ordinary and necessary expense in carrying on a trade or business and shall be deductible in the taxable year in which paid.

SEC. 403. ENFORCEMENT.

(a) General Rule . - There is hereby imposed a penalty on the failure of any industry source to make any payment required under section 402.

(b) Amount of Penalty . - The amount of the penalty imposed by subsection (a) on any failure with respect to an industry source shall be established by the Commissioner for each day during the noncompliance period.

(c) Noncompliance Period . - For purposes of this section, the term “noncompliance period” means, with respect to any failure to make the payment required under section 402, 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.

(d) Limitations . -

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

(2) Corrections . - No penalty shall be imposed under subsection (a) on any failure to make 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, would have known, that such failure existed.

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

TITLE V - PUBLIC HEALTH AND OTHER PROGRAMS

Subtitle A - Public Health Block Grant Program

SEC. 501. PUBLIC HEALTH TRUST FUND.

(a) Establishment . -

(1) In general . - The Secretary shall establish, as a separate fund within the Trust Fund established under section 401, a trust fund to be known as the "Public Health Trust Fund", consisting of such amounts as may be appropriated or credited to the Trust Fund.

(2) Trustees . - The trustees of the Trust Fund shall be the Commissioner and the Secretary.

(b) Transfers . - There are hereby appropriated and transferred to the Trust Fund the amounts described in section 401(d)(1) with respect to the year involved.

(c) Expenditures from Trust Fund . - Amounts in the Public Health Trust Fund shall be available in each calendar year, as provided by appropriations Act, for block grants under section 502.

SEC. 502. BLOCK GRANTS TO STATES.

(a) In General . - For the purpose described in subsection (b), the Secretary shall award a block grant to each State in each fiscal year in an amount based on the allotment of the State as determined in accordance with section 503.

(b) Authorized Activities . - A State shall use amounts received under a block grant only for the purpose of planning, carrying out, and evaluating activities as provided for in section 504.

(c) Application . - To be eligible to receive a grant under this subtitle a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including such assurances as the Secretary may require regarding the compliance of the State with the requirements of this Act.

SEC. 503. ALLOTMENTS.

(a) In General . - Of the amounts appropriated and available for block grants for a fiscal year under section 502, the Secretary shall allot to each State an amount determined under the allotment formula under subsection (b).

(b) Allotment Formula . -

(c) Reallotments . - To the extent that all the funds appropriated under section 501(c) for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because -

(1) one or more States have not submitted an application in accordance with section 502(c) for the fiscal year; or

(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment;

such excess shall be reallotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subsection.

(d) Indian Tribes and Tribal Organizations . -

(1) In general . - If the Secretary -

(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this subtitle be provided directly by the Secretary to such tribe or organization; and

(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this subtitle;

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for the fiscal year the amount determined under paragraph (2).

(2) Amount . - The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a) an amount to be determined by a formula developed by the Secretary after consultation with the Secretary of the Interior.

(3) Grant . - The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(4) Plan . - In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

(5) Definitions . - The terms "Indian tribe" and "tribal organization" shall have the same meaning given such terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(b) and (c)).

SEC. 504. USE OF FUNDS.

(a) In General . - Amounts provided to a State under a grant under this subtitle shall be used -

(1) to reimburse the State for expenses incurred by the State under the State program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) relating to the treatment of tobacco-related illnesses or conditions;

(2) to reimburse the State for other expenses incurred by the State in providing directly, or reimbursing others for the provision of, treatment for tobacco-related illnesses or conditions;

(3) to provide health care coverage, either directly or through arrangements with other entities, for uninsured individuals under 18 years of age who reside in the State;

(4) to establish a State tobacco products liability judgments and settlement fund, as provided for in subsection (c);

(5) to reimburse the State for expenses incurred in carrying out the tobacco licensure requirements of subtitle D of title I; and

(6) to carry out any other activities determined appropriate by the State.

(b) Limitations on Uses . - A State may not use amounts provided under a grant under this subtitle for programs or projects not approved of by the Secretary.

(c) Judgment and Settlement Fund . -

(1) In general . - Each State that receives a grant under this subtitle shall establish a fund for the purpose of making payments under paragraph (2).

(2) Payments . - The fund established under paragraph (1) shall be used to make payments to individuals who have obtained a judgment in a tobacco-related action brought in a State court, or who have entered into a settlement of such an action, of the amount of any award under such judgment or settlement that represents punitive damages.

SEC. 505. WITHHOLDING OF FUNDS.

(a) Authority . -

(1) In general . - The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not use its allotment in accordance with the requirements of this subtitle. The Secretary shall withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(2) Investigation . - The Secretary may not institute proceedings to withhold funds under paragraph (1) unless the Secretary has conducted an investigation concerning whether the State has used its allotment in accordance with the requirements of this subtitle. Investigations required by this paragraph shall be conducted within the affected State by qualified investigators.

(3) Response to complaints . - The Secretary shall respond in an expeditious manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the requirements of this subtitle.

(4) Minor failure . - The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the requirements of this subtitle.

(b) Investigations . - The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this subtitle in order to evaluate compliance with the requirements of this subtitle.

(c) Availability of Information . - Each State, and each entity which has received funds from an allotment made to a State under this subtitle, shall make available to the Secretary, for examination, copying, or mechanical reproduction on or off the premises, appropriate books, documents, papers, and records of the entity upon a reasonable request therefore.

Subtitle B - Other Programs

SEC. 511. NATIONAL SMOKING CESSATION PROGRAM.

(a) Establishment . - The Secretary shall establish a program to be known as the "National Smoking Cessation Program" under which the Secretary may award grants to eligible public and nonprofit entities and individuals for smoking cessation purposes.

(b) Eligibility . -

(1) Of entities . - To be eligible to receive a grant under this section an entity shall -

(A) be a public or nonprofit private entity;

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

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

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

(2) Of individuals . - To be eligible to receive a grant under this section an individual shall -

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

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

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

(c) Use of Funds . -

(1) By entities . - An entity that receives a grant under this section shall use amounts provided under the grant to establish or administer tobacco product use cessation programs that are approved in accordance with subsection (d).

(2) By individuals . - An individual that receive a grant under this section shall use amounts provided under the grant to enroll in a tobacco product use cessation program or to purchase a tobacco product cessation device that has been approved in accordance with subsection (d). Grants to individuals under this section may be in the form of vouchers that may be used to pay the costs of enrollment in an approved program or to purchase an approved device.

(d) Approval of Cessation Program or Devices . - Using the best available scientific information, the Secretary shall promulgate regulations to provide for the approval of tobacco product use cessation programs and devices. Such regulations shall be designed to ensure that tobacco product users, if requested, are provided with reasonable access to safe and effective cessation programs and devices. Such regulations shall ensure that such individuals have access to a broad range of cessation options that are tailored to the needs of the individual tobacco user.

(e) Funding . - The Secretary shall use amounts available under section 401(d)(2) to carry out this section.

SEC. 512. NATIONAL REDUCTION IN TOBACCO USAGE PROGRAM.

(a) Establishment . - The Secretary shall establish a program to be known as the "National Reduction in Tobacco Usage Program" under which the Secretary may award grants to eligible public and nonprofit entities to carry out activities designed to reduce the use of tobacco products.

(b) Eligibility . - To be eligible to receive a grant under this section an entity shall -

(1) be a State health department, other public entity, or a nonprofit private entity;

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

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

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

(c) Use of Funds . - An entity that receives a grant under this section shall use amounts provided under the grant to -

(1) carry out media-based and nonmedia-based education, prevention and cessation campaigns designed to discourage the use of tobacco products by individuals who are under 18 years of age and to encourage those who use such products to quit;

(2) carry out research concerning, and provide for the development and public dissemination of, technologies and methods to reduce the risk of dependence and injury from tobacco product usage and exposure;

(3) provide for the identification, testing, and evaluation of the health effects of both tobacco and non-tobacco constituents of tobacco products; or

(4) carry out any other activities determined by the Secretary to be consistent with the purposes of this Act.

(d) Funding . - The Secretary shall use amounts available under section 401(d)(3) to carry out this section.

SEC. 513. NATIONAL TOBACCO-FREE PUBLIC EDUCATION PROGRAM.

(a) Establishment of Board . -

(1) In general . - The Secretary shall establish an independent board to be known as the "Tobacco-Free Education Board" (referred to in this section as the "Board") to enter into contracts with or award grants to eligible public and nonprofit private entities to carry out public informational and educational activities designed to reduce the use of tobacco products.

(2) Appointment . - The Board shall be composed of 9 members to be appointed by the Secretary, of which -

(A) at least 3 such members shall be an individual who is widely recognized by the general public for achievement in the athletic, cultural, entertainment, educational, business, or political field; and

(B) at least 3 of whom shall be individuals who are heads of a major public health organizations.

(3) Terms and vacancies . - The members of the Board shall serve staggered terms as determined appropriate at the time of appointment by the Secretary. Any vacancy in the Board shall not affect its powers, but shall be filled in the same manner as the original appointment.

(4) Powers . -

(A) Hearings . - The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out the purposes of this section.

(B) Information from federal agencies . - The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.

(5) Personnel matters . -

(A) Compensation . - Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(B) Travel expenses . - The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(b) Establishment of Program . - The Secretary shall establish a program to be known as the "National Tobacco-Free Public Education Program" under which the Board may enter into contracts with or award grants to eligible public and non profit private entities to carry out public informational and educational activities designed to reduce the use of tobacco products.

(c) Eligibility . - To be eligible to receive a grant under this section an entity shall -

(1) be a -

(A) public entity or a State health department; or

(B) nonprofit private entity that -

(I) is not affiliated with a tobacco product manufacturer or importer;

(ii) has a demonstrated record of working effectively to reduce tobacco product use; and

(iii) has expertise in conducting a multi-media communications campaign;

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the activities to be conducted using amounts received under the grant or contract;

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

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

(d) Use of Funds . - An entity that receives a grant or contract under this section shall use amounts provided under the grant or contract to conduct multi-media public educational or informational campaigns that are designed to discourage and de-glamorize the use of tobacco products. Such campaigns shall be designed to discourage the initiation of tobacco use by minors and encourage those using such products to quit.

(e) Needs of Certain Populations . - In awarding grants and contracts under this section, the Board shall take into consideration the needs of particular populations.

(f) Funding . - The Secretary shall use amounts available under section 401(d)(4) to carry out this section.

SEC. 514. NATIONAL EVENT SPONSORSHIP PROGRAM.

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

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

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

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

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

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

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

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

(c) Permissible Sponsorship Activities . - Events, activities, teams, or entries for which a grant may be provided under this section include -

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

(2) the participation of a team that was sponsored in whole or in part by a tobacco manufacturer or distributor prior to the date of enactment of this Act, in an athletic event or activity; and

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

(d) Use of Funds . - Amounts received under a grant under this section shall be used to -

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

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

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

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

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

(2) promote images or activities to discourage individuals from using tobacco products or encourage individuals who use such products to quit.

(e) Allocation of Unexpended Funds . - Amounts available for purposes of carrying out this section and remaining available at the end of the 10-year period described in section 401(d)(5), shall be used as follows:

(1) 50 percent of such amounts shall be used to supplement amounts available for multi-media campaigns under section 512;

(2) 25 percent of such amounts shall be used to supplement amounts available for enforcement purposes under section 401(d)(8); and

(3) 25 percent of such amounts shall be used to supplement amounts available for community action programs under section 515. (f) Funding . - The Secretary shall use amounts available under section 401(d)(5) to carry out this section.

SEC. 515. NATIONAL COMMUNITY ACTION PROGRAM.

(a) Establishment . - The Secretary shall establish a program to be known as the "National community Action Program" under which the Secretary may award grants to eligible State and local governmental entities to carry out community-based tobacco control efforts that are designed to encourage community involvement in reducing tobacco product use.

(b) Eligibility . - To be eligible to receive a grant under this section an entity shall -

(1) be a State or local public entity;

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

(3) provide assurances that amounts received under the grant will be used in accordance with the purposes of this section; and

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

(c) Funding . - The Secretary shall use amounts available under section 401(d)(6) to carry out this section.

SEC. 516. NATIONAL CESSATION RESEARCH PROGRAM.

(a) Establishment . - The Secretary shall establish a program to be known as the "National Cessation Research Program" under which the Secretary may award grants to eligible entities for research concerning, and the development of methods, drugs, and devices to discourage individuals from using tobacco products and to assist individuals who use such products in quitting such use.

(b) Eligibility. -

(c) Use of Funds. -

(d) Additional Requirements. -

(e) Funding . - The Secretary shall use amounts available under section 401(d)(7) to carry out this section.

SEC. 517 | **(Deleted)** | **SYNERGY VICTIM TRUST FUND**

(a) Establishment . -

(1) In general . - The Secretary shall establish, as a separate fund within the Trust Fund established under section 401, **(deleted)** as the "Synergy Victim Trust Fund", consisting of such amounts as may be appropriated or credited to the Trust Fund.

(2) Trustees . - The trustees of the Trust Fund shall be appointed by the Secretary and shall be known as the "Synergy Victim Trust Board" (referred to in this section as the "Board").

(3) Appointment . - The Board shall be composed of 9 members to be appointed by the Secretary, of which -

(A) at least three (3) such members shall be individuals who represent, as attorneys in fact, synergy victims; excluding, however, any individuals who participated in the negotiations of the National Tobacco Settlement which led to the "Universal Tobacco Settlement Act."

(B) at least 3 of whom shall be AFL-CIO officials whose members are synergy victims.

(3) Terms and vacancies . - The members of the Board shall serve staggered terms as determined appropriate at the time of appointment by the Secretary. Any vacancy in the Board shall not affect its powers, but shall be filled in the same manner as the original appointment.

(4) Powers . -

(A) Hearings . - The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out the purposes of this section.

(B) Information from federal agencies . - The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.

(5) Personnel matters . -

(A) Compensation . - Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(B) Travel expenses . - The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(b) Directives- To resolve the tobacco manufacturers' liability and to compensate individuals exposed to asbestos and who smoked for the tobacco-caused component of asbestos disease claims. To provide individuals who smoked tobacco products and who have evidence of asbestos-related injury a method of expeditiously, fairly and reasonably resolving claims arising from the combined effects of smoking and asbestos through a consensual, administrative alternative to traditional tort litigation.

(c) Transfers . - There are hereby appropriated and transferred to the Trust Fund the amounts described in section 401(d)(9) with respect to the year involved.

(d) Expenditures from Trust Fund . - Amounts in the Synergy Victim Trust Fund shall be available in each calendar year, as provided by appropriations Act, for payment in accordance with the directions of the Board. The Synergy Victim Trust Fund shall be used to pay asbestos disease claims by persons who smoked and who were exposed to asbestos and designate their claims as fund eligible. The Synergy Victim Trust board shall agree upon a protocol to govern case processing from the Synergy Victim Trust Fund. The protocol shall provide that the fund shall, on certain agreed criteria pay a calculated percentage with the following percentages:

* Lung Cancer	- - - - - %
* Other cancers	- - - - - %
* Asbestosis	- - - - - %
* Other Asbestos Lung Disease	- - - - - %

SEC. 518. USE OF SURCHARGE PAYMENTS.

(a) In General . - Of the amount made available to the Secretary each year under section 401(d)(9), the Secretary shall -

(1) use not less than 90 percent of such amount to award grants to State and local governmental and public health agencies to carry out activities to further reduce the use of tobacco products by individuals who are under 18 years of age; and

(2) use not more than 10 percent of such amount for the administrative costs associated with the administration of title II and of chapter IX of the Federal Food, Drug and Cosmetic Act (as added by section 143(3)).

(b) Transfer of Certain Amounts . - If the Secretary determines that the administrative costs described in subsection (a)(2) are less than the amount available under section subsection, the Secretary may -

(1) transfer any such excess amount to other Federal, State, or local agencies to meet the needs associated with the reduction of underage tobacco usage; or

(2) expend such amounts directly for activities to expedite the reduction of underage tobacco use.

(c) Eligibility . - To be eligible to receive a grant under this section an entity shall -

(1) be a State or local governmental or public health agency;

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

(3) provide assurances that amounts received under the grant will be used in accordance with this section; and

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

(d) Funding . - The Secretary shall use amounts available under section 401(d)(9) to carry out this section.

TITLE VI - CONSENT DECREES, NON-PARTICIPATING MANUFACTURERS, AND STATE ENFORCEMENT

SEC. 601. PURPOSES.

It is the purpose of this title to provide for the establishment of consent decrees and the imposition of certain payment provisions, in addition to those otherwise provided for under Federal or State laws, to encourage manufacturers, distributors, and retailers to comply with this Act, and to otherwise provide for the enforcement of this Act with respect to non-participating manufacturers.

Subtitle A - Consent Decrees and Non-Participating Manufacturers

SEC. 611. CONSENT DECREES.

(a) Requirement . - To be eligible to receive payments under title V, a State, and to be eligible to receive liability protections under title VII, a tobacco manufacturer or distributor, shall enter into consent decrees under this section to be effective on the date of enactment of this Act.

(b) Terms and Conditions . -

(1) In general . - The terms and conditions contained in the consent decrees described in subsection (a) shall contain provisions to clarify the application and requirements of this Act (and the amendments made by this Act), including provisions relating to -

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

- (B) the termination, establishment, and operation of trade associations;
- (c) restrictions on tobacco lobbying;
- (D) the disclosure of tobacco smoke constituents;
- (E) the disclosure of nontobacco ingredients found in tobacco products;
- (F) the disclosure of existing and future documents relating to health, toxicity, and addiction related to tobacco product usage;
- (G) compliance and corporate culture;
- (H) the obligation of manufacturers to make payments for the benefit of States;
- (I) the obligation of manufacturers to interact only with distributors and retailers that operate in compliance with the applicable provisions of Federal, State, or local law regarding the marketing and sale of tobacco products;
- (J) requirements for warnings, labeling, and packaging of tobacco products;
- (K) the dismissal of pending litigation as required under title VII and as agreed to by the parties to the decree; and
- (L) any other matter determined appropriate by the Secretary or the parties involved.

(2) Limitations . - The terms and conditions contained in the consent decrees described in subsection (a) shall not contain provisions relating to -

- (A) tobacco product design, performance, or modification;
- (B) manufacturing standards and good manufacturing practices;
- (c) testing and regulation with respect to toxicity and ingredients approval; and

(D) the required percentage reductions in the underage use of tobacco products for a year under section 204. (3) Waiver of constitutional claims . - The terms and conditions contained in the consent decrees described in subsection (a) shall include a provision waiving the Federal or State constitutional claims of the parties and providing for the severability of the provisions of the decree.

(4) Construction . - The terms and conditions contained in the consent decrees described in subsection (a) shall provide that the terms of the decree will be construed in a manner that inconsistent with the provision of this Act.

(c) Approval . - To be valid under this section, the provisions of a consent decree must be approved by the Secretary prior to approval or entry by a court.

(d) Enforcement . -

(1) Changes in law . - The provisions of a consent decree entered under this section shall remain in effect and enforceable regardless of whether the provisions of this Act are amended, except that any amendments to this Act that -

(A) establish Federal requirements that are in conflict with obligations contained in the consent decrees shall render such obligations unenforceable;

(B) require allocations of funds that are in conflict with the allocation contained in the consent decrees shall render such consent decree allocation unenforceable; and

(c) require warnings, labeling, or packaging that conflicts with the warning, labeling, or packaging requirements of the consent decree, shall require that modifications be made in the consent decree to conform with such amendments.

(2) By state . -

(A) In general . - A State may bring an action to enforce the provisions of any consent decree under this section in any appropriate State court. Such proceedings may seek injunctive relief only and may not seek criminal or monetary sanctions. Enforcement of any injunctive relief provided under a State action under this section shall be permitted under any applicable State law.

(B) Consistency . - The Secretary, in consultation with the Attorney General, shall promulgate regulations to ensure the consistency of State court ruling with respect to conduct under a consent decree that is not exclusively local in nature.

SEC. 612. NATIONAL TOBACCO CONTROL PROTOCOL.

(a) Requirement . - Not later than 6 months after the date of enactment of this Act, each tobacco manufacturer to which this Act applies shall enter into a National Tobacco Control Protocol.

(b) Terms and Conditions . - The Protocol referred to in subsection (a) shall be -

(1) developed by the Secretary as a binding and enforceable contract that embodies the terms of this Act; and

(2) designed to be enforceable in Federal or State courts.

SEC. 613. NON-PARTICIPATING MANUFACTURERS.

(a) In General . - With respect to a manufacturer that elects not to enter into a consent decree under section 602, such manufacturer shall not be eligible to receive the liability protections under title VII.

(b) Imposition of User Fee . -

(1) In general . - Each manufacturer that elects not to enter into a consent decree under section 602 and not to become a signatory to the National Tobacco Control Protocol under section 603 shall be subject to an annual fee established under this subsection.

(2) Amount of fee . -

(A) Total . - The total amount of all fees established under this subsection for a year shall be equal to the amounts provided under paragraphs (1) and (8) of section 401(d) for the year.

(B) Per manufacturer . - The Secretary shall promulgate regulations for the purpose of assessing fees under this subsection and determining the amount of the fee to be assessed to each manufacturer.

(c) Settlement Reserve Fund . -

(1) In general . - Each manufacturer to which subsection (b)(1) applies shall annually deposit into an escrowed reserve fund an amount equal to 150 percent of the amount that such manufacturer would have paid under section 402 (except for that portion of the payments that would have been made available under paragraphs (1) and (8) of section 401(d)) for the year in which the manufacturer is making such deposit if the manufacturer had been a signatory to the National Tobacco Control Protocol under section 603. (2) Use . - Amounts contained in the reserve fund of a manufacturer under paragraph (1) shall be used solely for tobacco-related liability payments. The manufacturer may reclaim any amounts remaining in the fund (with interest) at the end of the 35-year period beginning on the date on which such fund is established.

Subtitle B - State Enforcement

SEC. 621. REQUIREMENT OF NO SALE TO MINORS LAW.

(a) Relevant Law . -

(1) In general . - Subject to paragraph (2), for each calendar year, the Secretary may not make any payments to a State under section 403 unless the State involved has in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18 that meets the requirements of this section.

(2) Delayed applicability for certain states . - In the case of a State whose legislature does not convene a regular session in fiscal year 1997, and in the case of a State whose legislature does not convene a regular session in fiscal year 1998, the requirement described in paragraph (1) as a condition of a receipt of payments under section 403 shall apply only for fiscal year 1999 and subsequent fiscal years.

(b) Requirements . - A State law described in subsection (a) shall comply with the following:

(1) Prohibition on sale . - Such law shall provide that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product within the State to any individual under the age of 18 years.

(2) Purchase, receipt or possession . -

(A) In general . - Such law shall provide that an individual under 18 years of age shall not purchase or attempt to purchase, receive or attempt to receive, possess or attempt to possess, smoke or attempt to smoke, or otherwise use or consume or attempt to use or consume a tobacco product in a public place.

(B) Employment . - Such law may permit an individual under the age of 18 to possess a tobacco product during regular working hours and in the course of such individual's employment if the tobacco product is not possessed for such individual's consumption.

(3) Inspections . -

(A) In general . - Such law shall provide that the State Police of a State, or such local law enforcement authority duly designated by the State Police, shall enforce this law in a manner that can reasonably be expected to reduce the extent to which tobacco products are distributed to individuals under 18 years of age and shall, at least monthly, conduct random, unannounced inspections in accordance with regulations promulgated by the Secretary under this section to ensure compliance with this law.

(B) Conduct . - Inspections under this paragraph shall be conducted in communities geographically and statistically representative of the entire State and the youth population of the State. Not less than 250 such inspections shall be conducted with respect to each 1,000,000 residents of the State.

SEC. 622. STATE REPORTING. (a) In General . - Not later than 2 years after the date of enactment of this Act, and annually thereafter, the State shall prepare and submit to the Secretary a reduction in tobacco product usage report. Such report shall, except as provided in subsection (b)(3), be made available to the general public of the State.

(b) Contents . - A report submitted under subsection (a) shall include -

(1) a detailed description of the enforcement activities undertaken by the State and the political subdivisions of the State concerning tobacco product usage laws for the year for which the report is being prepared;

(2) a detailed description of the progress of the State in reducing the availability of tobacco products to individuals under 18 years of age, including the detailed statistical results of the compliance inspection required under section 621;

(3) a detailed description of the methods used in such compliance inspection and in identifying outlets which were tested (the Secretary shall provide protections for the confidentiality of information provided under this paragraph);

(4) a detailed description of the strategies that the State intends to utilize in the current and succeeding years to make further progress on reducing the availability of tobacco products to individuals under 18 years of age; and

(5) the identity of a single State agency that is responsible for administering the requirements of title III in the State.

SEC. 623. REDUCTION IN STATE PAYMENTS. (a) Annual Determination . - Beginning with respect to the fifth full fiscal year after the date of enactment of this Act, and each fiscal year thereafter the Secretary shall make a determination as to whether each State has pursued all reasonably available measures to enforce the law described in section 621. (b) Presumptive Finding . - The Secretary shall find presumptively that a State has not pursued all reasonably available measures to enforce the law described in section 621 if the Secretary determines that the State has not achieved the following compliance rate results based on the findings of the retail compliance inspections conducted under the State law:

(1) With respect to each of the fifth and sixth fiscal years following the date of enactment, 75 percent compliance with State law.

(2) With respect to each of the seventh through ninth fiscal years following the date of enactment, 85 percent compliance with State law.

(3) With respect to the tenth and each subsequent fiscal year following the date of enactment, 90 percent compliance with State law.

(c) Amount of Reduction . -

(1) In general . - With respect to a State that the Secretary determines does not meet the compliance rates described in subsection (b), the Secretary may reduce the amount that the State may be eligible for under section 501. The amount of any such reduction shall not exceed an amount equal to 1 percent of the amount for which the State is eligible for under section 501 for the fiscal year involved for each 1 percentage point by which the State's compliance performance is below the applicable compliance rate.

(2) Limitation . - In no event shall the amount of any reduction under this section exceed an amount equal to 20 percent of the amount for which the State is eligible for under section 501 for the fiscal year involved.

(3) Reallotment . - The Secretary shall reallot any amounts withheld under this subsection to States with compliance rates that exceed the rates applicable under subsection (b) in amounts to be determined by the Secretary as appropriate to reward States with the highest compliance rates.

(d) Review . -

(1) Petition for release . - Not later than 90 days after the date on which a notice from the Secretary that the Secretary intends to make a reduction under subsection (c) is received, a State may petition the Secretary for a release and disbursement of such amount (referred to in this subsection as the "withhold amount"). The State shall give prompt written notice of such petition to the State attorney general.

(2) Action by secretary . -

(A) Holding and investing of funds . - Upon receipt of a petition under paragraph (1), the Secretary shall designate the withhold amount as subject to a petition and invest such amount in interest-bearing securities of the United States subject to a final disposition of the petition.

(B) Basis for determination . - In considering a petition received under paragraph (1), the Secretary shall consider -

(i) whether the State has acted in good faith and in full compliance with the provisions of this Act (and the amendments made by this Act) and any regulations promulgated in furtherance of this Act;

(ii) whether the State has pursued all reasonably available measures to achieve the compliance rates applicable under subsection (b) and the goals of this Act for reducing the underage use of tobacco products;

(iii) whether there is any evidence of any direct or indirect action taken by the State to undermine the achievement of the compliance rates and goals described in clause (ii); and

(iv) any other evidence determined appropriate by the Secretary.

(c) Burden . - With respect to any action by the Secretary on a petition under paragraph (1), the burden shall be on the State to prove, by a preponderance of the evidence, that the State should be granted a release and disbursement under the petition.

(D) Hearing . - The Secretary shall hold a hearing, with notice and an opportunity to be heard provided to the attorney general of the State and to manufacturers, prior to making any determination as to a petition under paragraph (1).

(E) Release of funds . - Upon a determination by the Secretary that the State has met the burden imposed under subparagraph (c) with respect to a petition, the Secretary shall disburse not to exceed 75 percent of the withhold amount (and any interest accrued on such amount) to the State. The Secretary may consider all relevant evidence in determining the amount to disburse to the State under this subparagraph.

(3) Appeals . -

(A) In general . - Any manufacturer or State attorney general aggrieved by a decision of the Secretary under paragraph (2) may, within 30 days of the date of such decision, seek judicial review of the decision in the United States Court of Appeals for the District of Columbia Circuit. The provisions of sections 701 through 706 of title 5, United States Code, shall apply to appeals filed under this paragraph.

(B) Limitation . - No stay or other injunctive relief that has the effect of enjoining the withholding of amounts under this section shall be permitted during the pendency of an appeal filed under this paragraph.

(c) Finality . - The decision of the Court of Appeals in an action under this paragraph shall be final.

TITLE VII - PROVISIONS RELATING TO TOBACCO-RELATED CIVIL ACTIONS

SEC. 701. GENERAL IMMUNITY.

(a) State Attorney General Actions . -

(1) Pending actions . - Civil actions that have been commenced by a State or local governmental entity, or on behalf of such an entity, against a manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612, and that are pending on the date of enactment of this Act are terminated.

(2) Future actions . - A manufacturer, distributor or retailer that is a signatory to the National Tobacco Control Protocol under section 612 shall be immune from any civil action commenced after the date of enactment of this Act by a Federal, State, or local governmental entity, or on behalf of such an entity, for all claims arising from the use of a tobacco product.

(b) Other Actions . -

(1) Class actions . -

(A) Pending actions . - Class actions for claims arising from the use of a tobacco product that are pending against a manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612, **excluding union health and welfare fund class actions** are terminated. **Pending third party payor actions as of the date of enactment of this Act are not subject to this legislation.**

(B) Future actions . - A manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612 shall be immune from any class action commenced after the date of enactment of this Act for all claims arising from the use of a tobacco product.

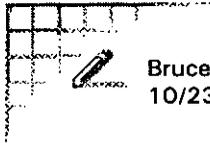
(2) Addiction and dependence claims . -

(A) Pending actions . - Any civil action for claims based on addiction to or dependence on a tobacco product that are pending against a manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612, are terminated.

(B) Future actions . - A manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612 shall be immune from any civil action commenced after the date of enactment of this Act for all claims based on addition to or dependence on a tobacco product.

(c) Preservation . - All personal injury claims arising from the use of a tobacco product by an individual shall be preserved.

Tobacco - settlement -
union lawsuits



Bruce N. Reed
10/23/97 05:54:42 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP, Elena Kagan/OPD/EOP

cc:

Subject: labor smoke

Unions Sue Over Tobacco-Related Health Expenses

Union attorneys borrow a page from state suits filed by attorneys general.

BY BOB VAN VORIS

NATIONAL LAW JOURNAL STAFF REPORTER

The National Law Journal (p. A01)
Monday, October 27, 1997

WHEN NEGOTIATORS SAT down to carve up \$368.5 billion in tobacco industry spoils this spring, Washington, D.C., lawyer Robert J. Connerton was not invited. But Mr. Connerton, who says he represents more than 23 million union members, may soon find himself right in the middle of the tobacco debate.

In April, Mr. Connerton's firm, Connerton & Ray, began filing statewide class actions against the tobacco industry to recover money spent on tobacco-related diseases by union health care trust funds. The cases, modeled after Medicaid cost-recovery suits brought by 40 attorneys general, have been filed in 28 states, with ore expected soon.

"I would characterize them as sort of knock-offs of the [attorney general] cases," says Thomas F. McKim, a lawyer for R.J. Reynolds Tobacco Co., the second-largest cigarette manufacturer in the United States.

The description is not entirely unjust. The causes of action are very similar, and some of the health care funds' court papers appear to borrow generously from the attorney general complaints. There are worse examples to follow, however.

The attorney general actions have forced unprecedented concessions from the tobacco industry, including settlements in Mississippi and Florida of \$3.6 billion and \$11.3 billion, respectively.

The funds' lawyers dismiss the idea that the attorneys general have an exclusive right to pursue the industry in this fashion. On the contrary, they say, the more parties working against Big Tobacco, the better.

A Mixed Cast

In contrast to the so-called Castano group--a Who's Who of plaintiffs' lawyers that

filed smokers' class actions across the country and participated in the global settlement talks--an unusual mix of litigators, labor lawyers and specialists in ERISA and trust funds are representing the health care funds.

Mr. Connerton's firm, which employs just 13 lawyers and three lobbyists, is best known for its expertise in labor and employee-benefits issues, although at least two partners have litigated toxic-tort cases. Consequently, Connerton & Ray has enlisted as co-counsel, among others, two New York-based litigation firms, Weitz & Luxenberg P.C. and Milberg Weiss Bershad Hynes & Lerach L.L.P.

The funds they represent provide medical coverage for people employed by small firms or who work at trades like construction, in which workers frequently move from employer to employer. Employers under collective bargaining agreements provide the money for the funds, which are administered by boards divided equally between union and industry representatives.

Federal law prevents the funds from spending money on anything other than members' health care and administrative expenses. As a result, fund lawyers say, any money recovered from the tobacco industry will go directly to union members' health care. "There is a far more direct relationship between payment of union members' medical expenses than between an [attorney general] and [a state's] citizens," says Melvyn I. Weiss, of Milberg Weiss.

Mr. Connerton says the funds also spend a greater proportion of their total payments on smoking-related illnesses than do the state Medicaid funds. "The class of people we represent is exactly the group [the tobacco companies] have been targeting," says Mr. Connerton. He quotes statistics suggesting that the blue-collar workers participating in union health care funds are more likely to smoke--and smoke heavily--and less likely to quit than the average American. He says the annual cost of treating smoking-related diseases among participants in union health care funds nationwide is \$3.3 billion--a cost he believes Big Tobacco should bear.

Genesis of the Union Suits

In the fall of 1996, says Mr. Connerton, faced with the example of state attorneys general suing to recoup Medicaid funds paid to treat sick smokers, he determined that his union clients could go after the tobacco industry on a similar theory. But complaints could not be filed until the spring, after fund trustees--who typically meet only four times a year--had a chance to consider the litigation and give Mr. Connerton a green light.

"All of a sudden, we started reading in the newspapers about the possibility of a settlement, and we started hearing we were going to be cut out," says Steven E. Fineman, of Weitz & Luxenberg, which signed on as co-counsel with Connerton & Ray in six eastern states and the District of Columbia. The group hustled to get as many cases filed as possible in an effort to keep the funds from being shut out, he says. By June 20, the day the global proposal was announced, they had filed in 11 states. Their fears of being cut out were justified. If enacted by Congress as is, the global settlement would effectively doom the health care fund cases, ending class actions, outlawing punitive damages and imposing other restrictions that would make the suits nearly impossible to try, much less win.

Conversely, the fund cases threaten to unravel the proposed settlement. "To sell the deal, they have to keep all other comers away from the door," says Victor J. Van

Bourg, of Van Bourg, Weinberg, Roger & Rosenfeld, in Oakland, Calif. The firm is co-counsel on the first health care fund case, filed in California in April. Van Bourg Weinberg is also co-counsel in cases brought in Arizona and Hawaii.

"I'm not looking to blow up a settlement the others have worked out," says Mr. Weiss. "I think the tobacco industry has more ability to pay than the \$368 billion reflects. That \$368 billion is really just a drop in the bucket." R. J. Reynolds' Mr. McKim says the health care fund suits are unlikely to affect any global resolution. "I don't think they're a threat to the settlement," he says. "They have so little legal merit."

So far, none of the cases has progressed far enough for its merits to be tested. Those in Washington, Oregon and California are the furthest along, but no judge has decided whether a class can be certified.

Army of Lobbyists

On the legislative front, four lobbyists are working to ensure that the funds are not shut out by a global settlement. And lawyers involved in the funds' tobacco cases have met with members of Congress and Clinton administration officials. They will have to speak loudly to be heard over the army of lobbyists pushing the proposed global settlement on behalf of the tobacco industry, the attorneys general and some plaintiffs' lawyers. "The tobacco lobby has hired almost every lobbyist in town. If I have any unemployed friends, I send them over," says Mr. Connerton.

The union fund lobbyists appear to be making some headway. Sen. Frank Lautenberg, D-N.J., has made comments indicating support. So has Minnesota's Attorney General Hubert H. Humphrey III, an outspoken critic of the global pact.

Many cities and counties, like the health care funds, were frozen out of the negotiations and stand to have their cases eliminated if the global settlement is enacted without change. Sixteen California cities and counties, including San Francisco and Los Angeles, have sued the tobacco industry. Lawsuits have also been brought by New York, Erie County, N.Y., and Cook County, Ill. Birmingham, Ala., has filed a federal class action on behalf of cities and counties nationwide.

Like lawyers for the cities and counties, those representing the funds predict that any legislative settlement cutting them out will be vulnerable to challenge on appeal. "They want to eliminate our lawsuits without giving us a penny," says Mr. Van Bourg. "Downright un-American, I say."□

Tobacco - settlements -
union lawsuits

Bruce R/Bruce L/
Eliz/Gerry

July 30, 1997

Memorandum

To: Elena Kagan

From: Jennifer O'Connor 

Subject: Tobacco Litigation

FYI- Information regarding Union lawsuits and tobacco.

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July 14, 1997

DELIVERED BY HAND

Mr. David Nexon
Minority Staff Director for Health
c/o Senator Ted Kennedy's Office
United States Senate
527 Senate Hart Office Building
Washington, D. C. 20510

Re: Tobacco Settlement

Dear David:

I am writing to follow-up our brief discussions concerning the efforts of a national coalition of Taft-Hartley, multiemployer health and welfare funds to obtain reimbursement of their costs for health care provided to participants and beneficiaries who suffer from tobacco-related diseases. The organization is called the Coalition for Workers' Health Care Funds. Enclosed is a copy of the Coalition's mission statement and some other materials. My law firm is serving as national coordinating counsel for the Coalition.

We took to heart your comment that all multiemployer funds should file claims for reimbursement. Statewide class action lawsuits have been filed by multiemployer funds in 15 States thus far: Massachusetts, Rhode Island, California, Washington, Ohio, Maryland, Illinois, New York, Connecticut, Kentucky, Iowa, Louisiana, Hawaii, Oregon and Arizona. Two lawsuits have been filed in New York: one for private sector multiemployer funds, and a second for public sector union plans. Multiemployer plan class actions will be filed shortly in 9 more States: Pennsylvania, Texas, New Jersey, Florida, West Virginia, Colorado, Indiana, Missouri and Tennessee.

Note that these lawsuits are grass-roots efforts. Local multiemployer funds, which are unaffected by the tobacco money that flows so freely in the Nation's capital, are leading the way. The plaintiff funds cover a broad range of worker groups, including laborers, ironworkers, carpenters, teachers, plumbers, seafarers, electricians, machanists, sheet metal workers, teamsters, and industrial workers.

As we discussed, the multiemployer funds' claims are essentially the same as the reimbursement claims made by the State Attorneys General. The Attorneys General demanded reimbursement for the tobacco-related health care costs incurred by State employee health plans as well as by the Medicaid programs. The "global"

David Nexon
July 14, 1997
Page 2

settlement agreement between the Attorneys General and the tobacco companies that is currently before Congress provides many billions of dollars in reimbursement to the States' health plans and programs.

Multiemployer funds, however, were not represented at the settlement table that produced that agreement, and the agreement provides no reimbursement to the funds. Worse, the agreement purports to, in effect, shut the court house doors to multiemployer funds' reimbursement lawsuits.

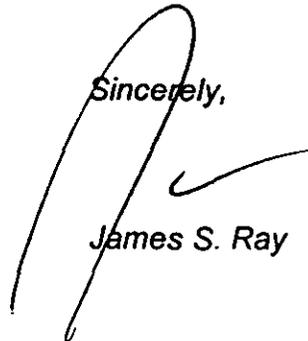
The Coalition will be sending a formal request to Senator Kennedy and Chairman Jeffords for an opportunity to testify at the Labor & Human Resources Committee hearing that has been scheduled for September. Our funds merely want a fair opportunity to press their claims for recompense; if not in Congress, in the courts unfettered by the restraints that the "global" settlement agreement would impose on the funds.

From a public health standpoint, reimbursement would enable multiemployer funds to provide smoking prevention and cessation programs for their participants and beneficiaries and reduce the cost burdens of tobacco-related disease on the funds and the workers whose labor finances the funds. Our funds cover worker groups (e.g., construction workers, seafarers) who were targeted by tobacco marketing and have higher rates of tobacco usage and tobacco-related disease. The children covered by multiemployer funds are more at risk for smoking and other tobacco usage.

To friends who express some concern about taking on the "labor friendly" tobacco industry, I simply ask: How can anyone object to multiemployer funds obtaining reimbursement when the tobacco companies have already agreed to reimburse State employee health plans?

I would be pleased to discuss this matter with you again at your convenience.

Sincerely,



James S. Ray

JSR/mlk
cc: Susan Green, Esq. (w/ encl)

NEWS:

FROM THE COALITION FOR WORKERS' HEALTH CARE FUNDS

BACKGROUND

The Coalition for Workers' Health Funds is a grouping of labor-management health and pension trust funds created under the Taft-Hartley Act of 1947.

The purpose of the coalition is to provide coordination at the national level for funds throughout the nation seeking reimbursement through the civil justice system from tobacco companies for monies paid out as a result of smoking-related illnesses suffered by American workers and their family members.

There are approximately 2000 such funds in the 50 states, the District of Columbia and Puerto Rico paying the medical and hospital bills of some 30 million Americans: workers, retirees and their families. The industries represented are characterized by small employers and transient and intermittent work patterns, e.g. building and construction, trucking, maritime, service and clothing.

The funds are financed by contributions resulting from collective bargaining agreements entered into between working men and women and their employers.

The lineage of these funds can be traced to the passage in 1947 of the Taft Hartley Labor Relations Act. Their mission is to promote health and safety in the workplace and guarantee that a worker's medical and hospital bills would be paid.

From the beginning these funds have also had, as a prime focus, workplace safety because it was in this area that workers suffered the most. Great strides have been made in improving workplace safety conditions.

Indeed, such progress has been made that, in 1996, for the first time, statistics showed fewer accidents per capita in the construction industry than in the nation's manufacturing sector.



BACKGROUND 2-2-2-2-2-2

As progress has been made in improving safety in the workplace the trustees of these funds began to look more closely at medical expenses that were non-safety related.

In every instance they found that by far the greatest cause of medical bills came from tobacco-related diseases. Coupled with the discovery that workers covered by the funds consumed tobacco at a rate roughly double that of the national average, it soon became apparent that something had to be done.

In September of 1996, a number of funds began to explore the question of filing class action suits against the tobacco companies to recover costs incurred for tobacco-related illnesses. The first such suit was filed in May, 1997 and others followed quickly.

The money to operate these funds is negotiated at the bargaining table, thus, every dollar spent treating tobacco-related diseases is a dollar that comes out of the worker's pay check.

Fund trustees have a fiduciary duty to manage costs in the best manner possible. They also have a moral duty to safeguard the health and safety of the workers.

These suits are an effort to fulfill both obligations.

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Coalition for Workers' Health Care Funds Update

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July 8, 1997

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Senate Judiciary Committee Off to Fast Start

Sen. Hatch Chairs First Hearing on Tobacco Agreement

The Senate Judiciary Committee, on Thursday, June 26, held the first of what is expected to be a lengthy series of congressional hearings to examine the "global" agreement entered into between the tobacco companies and attorneys general for 40 states.

Attracting a full line up of senators and massive press coverage the committee heard from a panel of three witnesses.

They were Michael Moore, Attorney General of the state of Mississippi, lead spokesman for the 40 attorneys general who signed on to the agreement; Matthew Myers,

executive vice-president and general counsel for the National Campaign for Tobacco Free Kids and Meyer Kaplow, an attorney representing the tobacco companies.

The following are excerpts of statements taken verbatim from the transcript of the committee hearing.

Excerpts from a statement read by Sen. Orrin Hatch (R-UT)

The proposed settlement also raises a myriad of challenging legal and constitutional questions, including the profound ramifications for our civil justice system embodied in proposed changes affecting class action lawsuits, punitive damage awards, and tobacco advertising.

As provocative as this agreement's possibilities are, the questions it immediately raises are very complicated. In the end, however, what we must settle on is whether this is a good deal.

Excerpts from a statement read by Sen. Patrick Leahy (D-VT)

The very existence of this settlement agreement is a credit to our civil justice system. In fact, without the use of class action and the likelihood of punitive damage

recoveries, does anyone believe that the tobacco companies would have ever come to the negotiating table or offered to contribute \$368.5 billion over the next 25 years? Without the willingness of private attorneys acting on behalf of their clients, taking significant financial and professional risks, and pursuing these matters so diligently, we would not be here today. At a time when some are trying to limit legal rights and remedies through national legislation, this proposed agreement reminds us that our state-based tort system remains one of the greatest and most powerful vehicles for justice anywhere in the world.

When tobacco companies were
(See, *Committee*, Page 3)

More Hearings Scheduled

Sen. Orrin Hatch (R-UT), chairman of the Senate Judiciary Committee, has announced the committee will hold a series of hearings on the tobacco agreement. The committee is expected to share jurisdiction with several other committees in the process of turning the agreement into federal legislation.

The announcement said the first hearing will deal with the legal implications of the agreement. It will be held on Wednesday, July 16.

The second will deal with public health issues. It will be held on Wednesday, July 30.

Inside:

Who's On First in the Tobacco Wars: Identifying the Key Players2

How Others See the "Global" Tobacco Settlement Agreement3

Who's On First in the Tobacco Wars: Identifying the Key Players

The agreement reached between the tobacco companies and the attorneys general has rapidly become one of those gigantic and far reaching administrative/ legislative/media minuets that periodically consume official - and unofficial - Washington, D.C. as it tries to come to grips with an issue of overriding public policy.

UPDATE will endeavor to keep its readers abreast of developments in this ongoing saga as well as identify the key players, their affiliations and where they stand on the issue.

The White House

President Clinton has ordered a review of the agreement. It will be conducted jointly by **Donna Shalala**, Secretary of Health and Human Services and **Bruce Reed**, Director of the White House Office of Domestic Policy.

These two have divided the agreement into smaller packages by subject matter and staffed by working groups.

The first of these deals with regulatory issues and the second deals with liability for cigarette manufacturers. A third deals with the effect the agreement will have on the federal budget. The fourth group will study the economic impact of the agreement on the tobacco industry. That study will be conducted by the President's Council of Economic Advisors.

Public Health Groups

Former Surgeon General of the United States, **Dr. C. Everett Koop** and former Administrator of the Food and Drug Administration (FDA) **David Kessler**, were requested by Congress to head up a group called the **Advisory Committee on Tobacco Policy and Public Health**.

It is widely believed that any recommendations forthcoming from these two will carry considerable weight with members of Congress.

The major public health groups represented on this committee are: **The American Medical Association**; **The American Cancer Society**, the **American Heart Association** and the **National Campaign for Tobacco Free Kids**.

Their current statements are in line with a position taken by **Dr. Koop** and **Mr. Kessler**. These hold that from a public health perspective the agreement has serious flaws that need to be fixed.

For the most part their misgivings are directed at language that appears to sharply circumscribe the ability of the FDA to regulate the contents of cigarettes.

Mr. Matthew Meyers, executive vice president and general counsel of the National Campaign for Tobacco Free Kids, who participated in the negotiations that led to the agreement, has been consistently supportive of the pact as written.

Attorneys General

Michael Moore, Attorney General of the State of Mississippi, has been the lead spokesperson for the attorneys general. Moore points out to critics of the agreement that perfection is not often achieved in the real world and that, while flawed, the deal represents the best that could be achieved under the circumstances.

Capitol Hill

Rep. Henry Waxman (D-CA), an influential member of the House on tobacco issues is, thus far, the lone voice categorically in opposition to the agreement, regardless of what modifications it may undergo.

Sen. Orrin Hatch (R-UT), Chairman of the Judiciary Committee, has long been critical of the tobacco industry. He has moved quickly to assert his committee's jurisdiction in the matter. His public statements make it appear that, while he has reservations about several aspects of the agreement, he believes it can be improved by modifications.

Rep. Newt Gingrich (R-GA), Speaker of the House of Representatives, has been critical of some aspects of the settlement. He has told Republican House Members not to expect to have to deal substantively with the issue any time before September at the earliest.

Sen. Edward M. Kennedy (D-MA), ranking minority member of the Labor and Human Resources Committee and a member of the Judiciary Committee has criticized aspects of the agreement. In general he has adopted the position that it is too easy on the tobacco industry and, in particular, fails to provide enough money to pay for health insurance for uninsured children.

Sen. Dick Durbin (D-IL), has long been critical of the tobacco industry. He has criticized the deal and has been critical of the National Campaign for Tobacco Free Kids for its position of support.

Rep. Thomas Bliley (R-VA), Chairman of the House Commerce Committee, another committee with apparent jurisdiction, represents a tobacco growing district and has a long history of support for the industry.

Sen. Wendell Ford (D-KY), Senate minority whip who holds the number two Democratic leadership position, represents another tobacco growing state. He has been a long-time supporter of the tobacco industry. □

fighting any and all lawsuits against them, a combination of legal challenges by private citizens and public officials were pursued against great odds. Men and women whose lives were cut short by cancer, heart disease and other adverse health consequences from tobacco deserved better treatment than the years of obstruction and denial by the tobacco industry. Only now as the internal documents are being discovered and the legal tide is beginning to turn have tobacco companies decided to change their strategy and pursue a settlement. The tobacco industry did not agree to this settlement out of some new found sense of public duty. The truth is that giant tobacco corporations were beginning to lose in court and after President Clinton initiated tough new regula-

tory efforts.

Three fundamental concerns

On my first reading on the 68-page agreement, I am struck by three fundamental concerns on the limits of this agreement; the limits of liability, the limits on disclosure and the limits on jurisdiction.

First, I am concerned about the agreement's sweeping limits on the ability of ordinary citizens to sue tobacco companies. The agreement would ban punitive damages and class actions on past conduct in exchange for payment of \$60 billion. That payment appears to have been structured so as to be tax-deductible for the tobacco companies, unlike true punitive damages. For lawsuits based on future conduct of the tobacco industry, the agreement would ban class action lawsuits

and impose other restrictions on the rights of individuals to seek legal recourse. The possibility of punitive damages and class action lawsuits are two important factors that brought us to this point. Class actions make it possible for individuals to band together to take on the powerful tobacco conglomerates in ways that an individual could not afford to take on alone. Punitive damages are awarded to punish egregious behavior - like the deceit or concealment of research that some have accused tobacco company officials of practicing.

Excerpts from statement of Sen. Edward M. Kennedy (D-MA)

The financial settlement reportedly offered by the tobacco industry - \$300 billion over 25 years - sounds enormous at first blush. People hear the \$300 billion and don't register the "25 years." They are offering \$12 billion a year. That number pales in comparison to the harm the industry causes. According to the Congressional Office of Technology Assessment, cigarettes cost the United States \$68 billion a year in health care costs and lost productivity. 419,000 Americans die each year due to smoking-related illnesses. Smokers lose an average of 15 years of their life. At current smoking rates, 10.5 million people will die prematurely due to tobacco during those years. Collectively, they will have lost 157 million years of life. Suddenly the industry's settlement offer does not sound large anymore.

Right to justice

We also hear that the industry wants blanket immunity from suits for its decades of willful wrongdoing as the price of a settlement. If
(See, *Committee*, Page 4)

How Others See the Tobacco Agreement

The "global" agreement between the tobacco companies and attorneys general for some 40 states has prompted close examination by a variety of interest groups as well as Members of Congress and the White House.

After more than two weeks of discussion, some seven main areas of interest within the agreement have been identified:

- Constraints on the ability of individuals, organizations and government officials to sue tobacco manufacturers in the future.
- The adequacy of \$1 billion in annual funding to help any American smoker who wants to quit.
- The adequacy of measures to enforce a dramatic reduction in use of tobacco products by children.
- Whether the FDA's ability to regulate nicotine and tobacco products would be inhibited under the deal.
- Whether the amount of money designated for public health initiatives to reduce tobacco use is adequate.
- The settlement's lack of international tobacco control measures.
- Constraints on disclosure of tobacco industry documents.

(Committee, Continued from pg.3)

that is the price, there will be no settlement. It would be unconscionable to deny people poisoned by tobacco their day in court. Each year, millions of Americans discover that they have diseases caused by smoking. In too many cases, it is beyond our power to restore their health. We must never permit the tobacco industry to extinguish their right to justice as well.

Excerpts from a statement read by Sen. Dick Durbin (D-IL)

As long and as difficult as these negotiations have been, this agreement is not written in stone. It is important to understand that the final deal, if there is one, is not the deal cut in secret between tobacco lawyers and state attorneys general. That is only the starting point. We will not rubber-stamp any deal, no matter how extensive. That is not our job.

This agreement must be reviewed and the final arbiters are the American people. And we here

in Congress have a responsibility to the American people to review the terms of the agreement and to improve it, to make certain that the final result is in the best inter-

“The financial settlement reportedly offered by the tobacco industry - \$300 billion over 25 years - sounds enormous at first blush. . . That number pales in comparison to the harm the industry causes. . . Smokers lose an average of 15 years of their life. At current smoking rates, 10.5 million people will die prematurely due to tobacco during those years. Collectively, they will have lost 157 million years of life. Suddenly the industry’s settlement offer does not sound large anymore.”

Sen. Edward M. Kennedy (D-MA)

ests of the health of our nation.

Excerpts from a statement read by Mr. Meyer Kaplow

In addition to mandating the payments described above, the proposed resolution preserves the individual’s right to sue the tobacco industry. In return for the enormous public health benefits and monetary payments described above, the proposed resolution affords the participating companies with some protection from civil liability in the following ways:

The following excerpts from the agreement were entered into the hearing record:

Title VIII. Civil Liability.

The following provisions would govern actions for civil liability related to tobacco and health.

A. General

1. Present attorney general actions (or similar actions brought by or on behalf of any governmental entity), parens patriae and class actions are legislatively settled. No future protection of such actions. All “addiction”/

dependence claims are settled and all other personal injury actions are reserved. As to signatory states, pending Congressional enactment, no stay applications will be made in pending actions, based upon the fact of this resolution, without mutual consent of the parties.

Agreement for civil liability. Protocol manufacturers not jointly and severally liable for liability of non-protocol manufacturers. Trials involving both protocol and non-protocol manufacturers to be severed. □

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Coalition for Workers' Health Care Funds Update

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July 1, 1997

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Mission Statement of the Coalition for Workers' Health Care Funds *Representing the Labor-Management Health Funds that Provide Health Care for 30 Million Americans: Workers, Retirees and Their Families*

Thirty million Americans - workers, retirees, and their family members - rely on labor-management, multiemployer health funds for health care coverage.

That is, these collectively bargained trust funds pay the hospitals, doctors, and other health care professionals who provide medical care, prescription drugs, and health services to workers, retirees and dependents.

Multiemployer funds play a vital role in the health care system of our nation, as recognized in current law

and in various legislative proposals advanced by Congress and the Clinton Administration.

But for these pooled, non-profit health funds, a great many more workers and their families would lack employment-based health care coverage and would have to depend on government programs for medical and related care.

These funds cover millions of workers in industries characterized by small employers and transient work patterns: e.g. building and construction, trucking, maritime,

service, and clothing.

Several of these worker groups have been specifically targeted by the tobacco industry's marketing, and have higher than average rates of smoking and tobacco-related disease.

Multiemployer funds have incurred billions of dollars in health care costs for individuals suffering from tobacco-related disease. These costs to the funds are ultimately borne by the covered workers who have seen a growing share of their
(See *Mission*, Page 4)

Workers' Health Care Funds in 14 States File Suit Against Big Tobacco Seeking Reimbursement

Workers' health care plans in 14 states and the District of Columbia have filed class action lawsuits against the tobacco industry asking for reimbursement for funds spent on tobacco-related illnesses and money for smoking cessation and prevention programs.

Some of the suits have been filed in state courts and others in federal court. As of July 1, 1997 actions had been filed in Arizona, California, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Massachusetts,

Maryland, New York, Ohio, Oregon, Rhode Island, and Washington.

The plaintiff funds provide health care coverage for laborers, carpenters, electricians, seafarers, engineers, painters, teamsters, sheet metal workers, plumbers and pipe fitters, ironworkers, transport workers, teachers, office employees, machinists, wood workers, and other groups.

It is expected that additional suits in other states will be filed shortly. ■

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Benefits From Tobacco Settlement Limited to State Employee Plans: Private Sector Plans Shut Out3

Costs: Workers Pay Through the Nose for Tobacco - And Through the Lungs and Heart3

Civil Liability Aspects of the Global Tobacco Settlement

Analysis Expected to be Both Lengthy and Complicated

The civil liability aspects of the global tobacco settlement agreement entered into between attorneys general for some 40 states and the tobacco industry are lengthy and complicated.

Certain portions of the agreement seek to limit the ability of some potential plaintiffs to file civil liability suits against the tobacco industry subsequent to the date the agreement was signed. Other portions would limit the kinds of lawsuits that could be brought in the future.

It was not immediately clear what effect, if any, the terms of the agreement would have on efforts by workers' health care funds in the 50 states to use the courts to recover monies spent paying claims for tobacco-related illnesses. The final say, of course, resides with Congress which will conduct an exhaustive investigation into the deal.

Already, the Senate Committee on the Judiciary, chaired by Sen. Orrin Hatch (R-UT) has held a preliminary hearing based on the fact that it has jurisdiction over the civil liability aspects of the agreement.

In that hearing there was substantial criticism of the agreement by members of the

committee who feared its terms were too lenient on the tobacco industry.

Attorneys acting on behalf of the Workers' Coalition for Health care Funds are studying the 68-page agreement in an effort to determine what effect, if any, it would have on class action lawsuits filed by funds in some 14 states as of press time.

The following is a verbatim excerpt of those portions of the agreement devoted to the area of civil liability as published in the June 25, 1997 editions of The New York Times.

The following provisions would govern actions for civil liability related to tobacco and to health:

1 - Present Attorney General actions (or similar actions brought by or on behalf of any governmental entity), *parens patriae* and class actions are legislatively settled. No future prosecution of such actions. All "addiction"/dependence claims are settled and all other personal injury claims are reserved. As to signatory states, pending Congressional enactment, no stay applications will be made in pending actions, based upon the fact of this resolution, without mutual consent of the parties.

2 - Individual trials only: *i.e.* no class actions, joinder, aggregations, consolidations, extrapolations or other devices to resolve cases other than on the basis of individual trials, without defendant's consent. Action removable by defendant to federal court upon receipt of application to, or order of, state court providing for trial or other

procedure in violation of this provision.

3 - Permissible parties:
Plaintiffs:

a. Claims of individuals, or claims derivative of such claims, must be brought either by the person claiming injury or the claimant's heirs.

b. Third-party payer (and similar) claims not based on subrogation that were pending as of June 9, 1997.

c. Third-party payer (and similar) claims not based on subrogation of individual claims; no extrapolations, etc.

Defendants:

a. Maintained only against companies, their assigns, any future fraudulent transferee and/or entity or suit designated to survive defunct manufacturer....

b. Manufacturers of agents agencies and liable vicariously for acts (including advertising attorneys). ■

Labor-management, multi-employer health care funds cover 30 million Americans; workers, retirees and their dependents.

For the most part they cover workers in small-employer industries with transient work patterns, such as building and construction, trucking, maritime, service and clothing.

These groups have been targeted by tobacco industries' marketing and advertising policies. Workers in these groups suffer from higher rates of tobacco-related illnesses than the national average.

COALITION FOR WORKERS' HEALTH
CARE FUNDS UPDATE

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DAVID A. JEWELL
EDITOR

Workers Pay Through the Nose for Tobacco- And Through the Lungs and Heart

The cost of smoking only begins when a worker pays for a package of cigarettes. The costs to workers' health far outstrips the cost to their pocketbooks.

This is particularly true when it comes to health care funds covering workers in the construction industry who have for many years been targeted by cigarette marketing and advertising campaigns. Statistics show clearly they have much higher than average rates of smoking and tobacco-related diseases.

A study by one multiemployer health fund covering mostly construction workers in the American Northwest showed that, in 1994 more than 26% of the workers cov-

ered received treatment for smoking-related diseases. For their family members the figure was seven percent.

This is a multiple tragedy - first for the workers and their families and next for their health care fund which faces increasingly rising costs - costs that are paid for with money that would otherwise have gone into the workers' pay packets.

Figures contained in the broad-based national Health Interview conducted by the federal government bears out these shocking statistics.

They show that 47 percent of construction workers are smokers compared with 24 percent of all white

collar occupations and 39 percent of all blue collar occupations combined. Even more worrisome are statistics which show a sharply lower rate of blue collar workers who succeed in kicking the smoking habit.

In an article entitled *Targeting of Cigarette Advertising in U.S. Magazines, 1959-86*, investigators from the University of Michigan showed that tobacco companies targeted blue collar workers in their advertising and promotional strategies. ■

Benefits From Tobacco Settlement Limited to State Employee Health Plans *Private Sector Workers' Plans Shut Out*

The global tobacco settlement agreement signed by some 40 state attorneys general and the tobacco industry would *not* benefit labor-management health care funds covering working families in the private sector.

Men and women employed in construction, trucking, food, clothing, service and maritime industries, their families and retired workers - some 30 million strong - would receive *no* reimbursement for their billions of dollars in tobacco-related disease costs under the secretly negotiated agreement between the states and tobacco companies.

On the other hand, state public employee health plans and Medicaid programs would be paid hundreds of *billions* of dollars by the tobacco companies to reimburse the

costs of health care for government employees and public assistance recipients suffering from tobacco-related illnesses.

Moreover, the so-called global settlement calls for federal legislation to close the courthouse doors to lawsuits against the tobacco companies by those not party to the negotiations and to protect the tobacco companies from normal legal remedies.

However, attorneys acting on behalf of the Workers' Coalition for Health care Funds are studying the complex 68-page agreement in an effort to determine what effect, if any, it would have on class action lawsuits filed by funds in some 14 states as of press time. These actions seek reimbursement for workers' funds for money already paid for tobacco-related diseases. ■

Labor-management, multiemployer health funds -

- o are non-profit trust funds administered by representatives of the covered workers and their employers;

- o are financed by collectively bargained contributions which employers pay on behalf of their workers as part of the compensation for their labor;

- o pay the hospital, doctor and pharmacy bills of 30 million Americans - workers, retirees and their family members;

- o provide health coverage for workers in industries characterized by transient, intermittent work patterns and small employers (e.g. construction) many of whom would not have on-the-job- health care coverage but for these funds and would be dependent upon government health programs;

- o enable workers to move from employer to employer, and state to state without losing health care coverage;

- o cover worker groups targeted by tobacco companies' marketing campaigns; and

- o are regulated by federal law.

(Mission, Continued from pg. 1) compensation package absorbed by the collectively bargained contributions needed by the funds to keep pace with increases in health care costs.

These funds have claims against the tobacco companies for reimbursement of their health care costs for tobacco-related disease. Reimbursement would enable the funds to provide smoking prevention and cessation programs for covered individuals, as well as reduce the cost burdens of tobacco-related disease on the funds and the covered workers.

Reimbursement Sought

The funds' claims are essentially the same as the reimbursement claims asserted by the 40 or so states that have filed suit against the tobacco companies. The states' lawsuits seek reimbursement of the costs incurred by the states' employee health plans and Medicaid programs in providing health care to government employees and public assistance recipients.

The settlement agreement negotiated between the states' attorneys general and the tobacco companies provides for reimbursement to the states' employee health plans and

Medicaid programs, as well as relief for certain private lawsuits brought by attorneys who were party to the settlement negotiations. Multiemployer funds, which were not represented in the negoti-

Multiemployer health funds provide coverage for some 30 million Americans and play a vital role in our nation's health care system

ations, would not receive reimbursement under the settlement agreement.

The settlement agreement presumes to "legislatively settle" some lawsuits and to severely limit access to the courts and the relief available for cases not resolved by the agreement.

For example, the agreement prohibits the filing or continuation of class actions against the tobacco companies, and further protects the tobacco companies from punitive damages for past wrongdoing. To the extent that the agreement purports to apply these limitations to the claims of multiemployer funds, it cannot be justified.

Before the settlement agreement was reached, multiemployer funds in several states filed class action lawsuits against the tobacco com-

panies seeking reimbursement of health care costs. Several more reimbursement class actions will be filed shortly by multiemployer funds in other states. These lawsuits are similar to the reimbursement lawsuits filed by the states' attorneys general.

Equal Treatment

The Coalition for Workers' Health Care Funds has been formed to represent these funds and coordinate their activities with regard to their reimbursement claims. The Coalition's mission is to seek for multiemployer funds equal treatment with the states' health care plans and programs with regard to reimbursement from the tobacco companies. While pursuing all available recourse through the courts, the Coalition intends to inform Members of Congress, the Administration, interest groups, and the public about the concerns of the multiemployer fund community. It would be in the best interests of all concerned -the Federal Government, the states, the tobacco companies, the public health community, and the millions of families relying on multiemployer health funds - for the tobacco companies to provide fair reimbursement to multi-employer funds. ■

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Union health-care funds suing tobacco companies

Richmond Times-Dispatch
Wednesday, July 09, 1997

BY PETER HARDIN

Times-Dispatch Washington Correspondent

WASHINGTON As the tobacco industry pushes for a landmark \$368.5 billion settlement of 40 state lawsuits, it's facing a new wave of litigation from trade union health-care trust funds.

Health-care trust funds have filed class-action lawsuits against tobacco companies in 16 states since May to recoup expenses for smoking-related sicknesses, and lawsuits are likely to be filed in nine or 10 other states, an attorney helping to coordinate the lawsuits said yesterday.

Philip Morris Cos., one of the targeted companies, believes the lawsuits are premised on flawed legal and factual theories and the plaintiffs won't prevail, company lawyer Valerie Kilhenny said.

"The suits are wrong, and the members will lose, and this is wasteful of valuable fund assets," Kilhenny said in a telephone interview.

Brian McQuade, chairman of the newly created Coalition for Workers' Health Care Funds, said its several hundred members were bypassed by the recent tobacco settlement proposal.

"The recently announced 'global' settlement of similar suits filed by state attorneys general and the tobacco industry does not take into account the 30 million men, women and children covered by the (trust) funds," McQuade said at a news conference.

"Our workers, more than any other class of Americans, have been targeted by the advertising and marketing campaigns of the tobacco industry," McQuade said. "The percentage of smokers among our members is roughly double the national average," at 44 percent to 45 percent, he added.

The coalition is made up of health-care trust funds for workers in industries characterized by transient, intermittent work patterns, including construction, trucking, maritime, service and clothing. The trust funds pay hospital, doctor and pharmacy bills for workers, retirees and family members.

Robert J. Connerton, a Washington lawyer helping the trust fund plaintiffs, said the new lawsuits are similar to those filed by attorneys general in 40 states.

In addition to pressing the lawsuits, Connerton said the health-care trust funds intend to work hard on Capitol Hill to protect their position.

The coalition is unhappy with limits on legal liability for tobacco companies proposed in the settlement, which must get

approval from Congress and President Clinton to become effective.

Critics to issue report

The proposed accord would eliminate punitive damage awards against the tobacco companies for past conduct. It also would prohibit both the filing of new class-action lawsuits against the tobacco industry and the continuation of existing ones, according to coalition officials.

Since the settlement proposal was unveiled June 20, it has come under fierce criticism from some public health groups.

Today, two leading critics, former Food and Drug Administration Commissioner David Kessler and former Surgeon General C. Everett Koop, were to issue a report by their 22-member advisory panel recommending future tobacco control policy sharply at odds with some provisions of the settlement.

Mississippi settled

One suing state, Mississippi, already has closed a settlement with cigarette makers in the wake of the proposal. It struck an agreement last week, just days before it was scheduled to go to trial. Whether or not Congress and Clinton approve the national accord, Mississippi will collect \$3.6 billion over 25 years.

A series of private class-action lawsuits brought by a coalition of plaintiffs' lawyers around the nation also would be settled if the accord is enacted.

The states where health-care trust funds have lodged suits so far include: Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, New York, Ohio, Oregon, Rhode Island and Washington.

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Tobacco Industry Is Sued By Unions for Health Outlays

Wall Street Journal - Interactive Edition

Thursday, July 03, 1997

By MILO GEYELIN

Staff Reporter of THE WALL STREET JOURNAL

A growing number of health-and-benefit funds for construction trade unions are suing the tobacco industry to recover their health-care outlays for treating sick smokers.

There are now 15 such suits, all styled after the so-called Medicaid recoupment suits in which 40 states and the territory of Puerto Rico are seeking to recover billions of dollars in public health-care costs linked to smoking.

The latest lawsuit was filed Tuesday in federal court in Hartford, Conn., by a health-and-benefit fund for the Connecticut Pipe Trades and the International Brotherhood of Electrical Workers, Local 19.

"Basically we're using the same theory that state AGs had when they sued to recoup their cost of treating tobacco-related diseases," said Robert J. Connerton, at Connerton & Ray in Washington, D.C., one of several law firms involved in the Connecticut suit.

Tobacco-industry representatives said they planned to fight the suits the same way they have fought the attorneys general. "We think the plaintiffs are basing their cases on legal and factual theories that are flawed," said Valerie Kilhenny, an in-house lawyer and spokeswoman for Philip Morris Cos. "We just do not think the law permits for persons who were remotely or indirectly injured to collect damages."

Similar suits by union health-and-benefit funds have been filed in more than half a dozen states, including New York and Washington, over the past three months, and more are expected, said Mr. Connerton. The Connecticut Pipe Trades and International Brotherhood of Electrical Workers, Local 19 has some 2,500 members who are participants in the health-and-benefit fund. An estimated 18% are believed to have some form of smoking-related disease, said Mr. Connerton.

New York lawyer Steven Fineman, a co-counsel in the suit, said the number is so high because construction workers smoke more than most people. According to the complaint, the tobacco industry targets blue-collar workers in its advertising and marketing campaigns.

This new wave of suits could complicate the proposed \$368.5 billion national settlement that was reached last month by the attorneys general, plaintiffs lawyers and the tobacco industry and that is being reviewed by the White House, Congress and public health groups. Union health-and-benefit funds weren't represented in the talks. And they are researching the constitutionality of provisions in the agreement, which if

enacted into law by Congress, would limit lawsuits.

The proposed settlement bans all punitive damages for past wrongful conduct by the tobacco industry. It also sharply limits suits against tobacco companies filed by insurance companies, health-care providers and benefit plans after June 9. After that date, class-action suits, consolidations of multiple suits into one trial, or the use of statistical models to prove total damages would be banned. Claims for damages would have to proceed case by case, a requirement that would make such third-party suits too wieldy and burdensome to take to trial.

Mr. Fineman said half of the union health-and-benefit-fund suits now pending were filed before the June 9 cutoff. Nevertheless, he added, "If [the agreement] becomes the law, then our cases have real problems."

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NBA beckons for UK and U of L stars - Sports, C1

The Courier-Journal

40 PAGES • A GANNETT NEWSPAPER

LOUISVILLE, KENTUCKY

TUESDAY, JUNE 24, 1997 • 50 CENTS

METRO
EDITION

Union health fund sues tobacco industry

Labor group wants Kentucky medical costs reimbursed

By JOE WARD
The Courier-Journal

Taking a page out of the strategy book of the 40 states that have sued the tobacco industry, the Kentucky Laborers Union health and welfare fund is suing to recover money it has

spent on members with smoking-related illnesses.

The Laborers Union fund, which represents an estimated 1,700 workers in Kentucky, is the latest fund to join a new, rapidly growing national force on the tobacco litigation front.

The union fund is the first in Kentucky to sue the tobacco industry and joins funds in 11 other states that have filed similar lawsuits in the past month.

The Kentucky suit was filed in U.S. District Court in Louisville last Friday. Attorneys involved in the suits

said they expect another eight or nine suits to be filed this week.

"It's picking up steam," said Bob Connerton, a Washington, D.C., attorney whose firm is coordinating the union health fund suits. Herb Segal, a Louisville labor attorney, is representing the Kentucky Laborers Union fund.

Attorneys for the fund say it is a coincidence that the suit was filed on the very day of the historic \$360 billion settlement between the tobacco industry and the attorneys general for the 40 states and others. The 40 states

NO MORE: The powerful Tobacco Institute will cease to exist if the agreement becomes law. **ET**

filed suit against the tobacco industry to recover state Medicaid funds spent on smoking-related illnesses.

Segal and Connerton said they don't know at this point what effect the settlement will have on their suit. The tobacco settlement bans future class-action lawsuits.

The fund provides a form of health insurance for Kentucky members of the Laborers International Union of North America and their families. Members of the Laborers Union generally work in construction, employed by any of a number of contractors and builders, and often working for many different employers over the course of a year.

Money to cover benefits is provided by the employers and the fund is ad-

See LABORERS' Page 4, col. 8, this section



Betty Shabazz dies of injuries from fire

Betty Shabazz, the widow of civil-rights leader Malcolm X, died yesterday of burns suffered in a June 1 fire. News, A3

Blacks, whites have mission

Landmark restaurant may soon disappear



Molesters can be held

Laborers' fund sues tobacco industry

Continued from Page One

ministered by a board of trustees with an equal number of members from the union and from the group of employers that have contracts with the union.

CONNERTON, WHOSE firm has coordinated all 12 of the suits filed so far, said determining how much each fund has spent on tobacco-related illnesses is complicated, and the process has not been completed for the Kentucky fund.

But he said tobacco-related illnesses make up about 18 percent of direct fund expenses for a fund in another of the suits — or about \$3 million a year for 7,000 workers with 7,000 dependents.

Connerton said tobacco-related expenses would be different for each fund because some groups have more smokers than others, and benefits vary from fund to fund. But the numbers for the other fund suggest that the Kentucky fund's tobacco-related expenses might be around \$700,000 a year.

The Kentucky suit names the major tobacco companies — including Louisville-based Brown & Williamson Tobacco Corp. and Philip Morris Inc., which has a plant in Louisville — as well as several industry organizations and a public-relations firm.

It charges, as the state suits have, that the tobacco companies conspired to hide the dangers of smoking from their customers and manipulated nicotine levels to keep smokers hooked. And, Connerton said, "it asks for the same sort of relief as the states ask."

The suit "asks for the same sort of relief as the states ask."

Attorney
Bob Connerton

Joe Helewicz, Brown & Williamson vice president for corporate communications, said he had not seen the Kentucky suit and could not comment on it. But he noted that, as a class action, it would be barred by the settlement reached last Friday, if the settlement is adopted in its current form.

Connerton is a partner in Connerton & Kay, a Washington firm with national expertise in union health and welfare funds that involve unions that work with multiple employers, where unions and

trades unions have such funds," Segal said.

Connerton said fund trustees began asking about last September whether they had a duty to sue the tobacco companies as the states had. The first union suit was filed about a month ago.

In response to an earlier class-action lawsuit against the tobacco industry, the U.S. Supreme Court ruled that class actions must proceed on a state-by-state rather than a national basis. Thus, Connerton said, the funds have filed state by state. In addition to the Kentucky fund, funds in California, Washington, Oregon, Hawaii, Arizona, Illinois, Ohio, Massachusetts, Connecticut, New York and Louisiana are suing the tobacco industry.

Connerton said the suits are being filed as class actions, on behalf of all such funds in each state. In several states, funds other than those that filed have joined in. In Illinois, for example, he said, three funds filed and 22 are now named plaintiffs.

Connerton said he and other lawyers involved in the fund suits are in the dark about the effect on them of last Friday's landmark tobacco settlement, which still needs approval of the White House and the Congress to take effect.

RICHARD DAYNARD, director of the Tobacco Products Liability Project at Northeastern University School of Law in Boston, noted that news accounts said the settlement would protect the industry from class-action suits.

But Daynard said it is a provision he would be surprised to see survive the scrutiny of the White House. And he said the union funds will amount to a significant group, in part because tobacco-related illnesses among union members are thought to be higher than for the general public.

"I don't know whether the agreement purports to cover us or not," Connerton said. "We've not been contacted by any of the parties (in the settlement negotiations), and they were well aware of our litigation."

"I have a couple of colleagues studying the settlement carefully," he said.

But "when all is said and done," Connerton said, "our funds are every bit as entitled to recoup some of their expenses as the states are."

"We've filed these suits. We're going to continue to file. What happens tomorrow, we basically don't know."

Coalition of Health Care Funds Targets Big Tobacco for Compensation of Costs

In an effort to recover the costs of treating smoking-related illness, about 2,000 health funds representing 30 million workers are working together to coordinate efforts.

The approximately 2,000 multiemployer funds—known as Taft-Hartley or collectively bargained funds—have formed a coalition to coordinate litigation against tobacco companies and seek compensation for monies that were spent treating workers' tobacco-related illnesses.

Brian McQuade, president of the Coalition for Workers' Health Care Funds, said at a July 8 news conference that the exact cost for treatment of the illnesses has not yet been determined, but he predicted the amount could match the \$368.5 billion settlement reached by state attorneys general with the tobacco industry. The coalition opposes the June 20 settlement negotiated by the state attorneys general, saying it unfairly limits liability suits against the companies.

Robert Connerton, coalition legal counsel, said about 18 percent of the direct costs to the health funds goes toward treating tobacco-related illnesses.

According to Connerton, 16 class action suits have been filed and he expects that number to rise to 25 or 26 in a little over a week.

McQuade said other goals of the coalition include obtaining money for programs to prevent smoking and to help workers quit, as well as to hold down the increase in future medical costs to the funds.

Coalition Challenges Recent Agreement. McQuade and Connerton expressed dismay over a clause in the recent agreement by the state attorneys general with the tobacco companies that limits further liability suits against the companies.

McQuade said the parties "neglected to take the men and women of the American labor movement into consideration as they pursued their deliberations."

Connerton said the agreement prohibits everyone else from exercising their rights. "They clearly were not authorized by us to act on our behalf," he said.

According to Connerton, the agreement would make all suits filed before June 9 ineligible to be filed as class actions, which affects six of the funds' suits. In addition, it would prohibit any suits filed after that date.

Congress still has to approve the agreement, and McQuade said he believes Congress will not "enact legislation that would leave out tens of millions of American workers and their families."

Workers Targets of Big Tobacco. The coalition, which represents workers in blue-collar industries such as construction, trucking, maritime, service, and clothing, is charging that tobacco companies specifically targeted these workers to encourage them to start smoking.

McQuade said the percentage of smokers among the workers covered by coalition member-plans is double the national average.

Workers covered by the funds begin their trades and crafts at a young age, McQuade added. "This means that the more successful the tobacco companies are in persuading teenagers to take up smoking, the greater will be the financial drain on our health care funds and the deterioration of the health of our members," he said.

McQuade said the coalition's goals can be achieved through direct negotiations with the tobacco companies, a provision for their workers made by Congress, or litigation of the cases in court.

By AMANDA J. CRAWFORD

NEWS:

FROM THE COALITION FOR WORKERS' HEALTH CARE FUNDS

COALITION FOR WORKERS' HEALTH CARE FUNDS

REPRESENTING THE LABOR-MANAGEMENT HEALTH FUNDS THAT PROVIDE
HEALTH CARE FOR 30 MILLION AMERICANS: WORKERS, RETIREES AND THEIR
FAMILIES

Tobacco Project Mission Statement

Thirty million Americans—workers, retirees, and their family members—rely on labor-management, multiemployer health funds for health care coverage. That is, these collectively bargained trust funds pay the hospitals, doctors, and other health care professionals who provide medical care, prescription drugs, and health services to workers, retirees and dependents.

Multiemployer funds play a vital role in the health care system of our Nation, as recognized in current law and in various legislative proposals advanced by Congress and the Clinton Administration. But for these pooled, non-profit health funds, a great many more workers and their families would lack employment-based health care coverage and would have to depend on government programs for medical and related care. These funds cover millions of workers in industries characterized by small employers and transient work patterns: e.g. building and construction, trucking, maritime, service, and clothing. Several of these worker groups have been specifically targeted by the tobacco industry's marketing, and have higher than average rates of smoking and tobacco-related disease.

Multiemployer funds have incurred billions of dollars in health care costs for individuals suffering from tobacco-related disease. These costs to the funds are ultimately borne by the covered workers who have seen a growing share of their compensation package absorbed by the collectively bargained contributions needed by the funds to keep pace with increases in health care costs.

These funds have claims against the tobacco companies for reimbursement of their health care costs for tobacco-related diseases. Reimbursement would enable the funds to provide smoking prevention and cessation programs for covered individuals, as well as reduce the cost burdens of tobacco-related disease on the funds.



Mission Statement: Page 2

The funds' claims are essentially the same as the reimbursement claims asserted by the 40 or so States that have filed suit against the tobacco companies. The States' lawsuits seek reimbursement of the costs incurred by the States' employee health plans and Medicaid programs in providing health care to government employees and public assistance recipients.

The settlement agreement negotiated between the States' Attorneys General and the tobacco companies provides for reimbursement to the States' employee health plans and Medicaid programs, as well as relief for certain private lawsuits brought by attorneys who were party to the settlement negotiations. Multiemployer funds, which were not represented in the negotiations, would not receive reimbursement under the settlement agreement.

The settlement agreement presumes to "legislatively settle" some lawsuits and to severely limit access to the courts and the relief available for cases not resolved by the agreement. For example, the agreement prohibits the filing or continuation of class actions against the tobacco companies, and further protects the tobacco companies from punitive damages for past wrongdoing. To the extent that the agreement purports to apply these limitations to the claims of multiemployer funds, it cannot be justified.

Before the settlement agreement was reached, multiemployer funds in several States filed class action lawsuits against the tobacco companies seeking reimbursement of health care costs. Several more reimbursement class actions will be filed shortly by multiemployer funds in other States. These lawsuits are similar to the reimbursement lawsuits filed by the States' Attorneys General.

The Coalition for Workers' Health Care Funds has been formed to represent these funds and coordinate their activities with regard to their reimbursement claims. The Coalition's mission is to seek for multiemployer funds equal treatment with the States' health care plans and programs with regard to reimbursement from the tobacco companies. While pursuing all available recourse through the courts, the Coalition intends to inform Members of Congress, the Administration, interest groups, and the public about the concerns of the multiemployer fund community.

It would be in the best interests of all concerned—the Federal Government, the States, the tobacco companies, the public health community, and the millions of families relying on multiemployer health funds—for the tobacco companies to provide fair reimbursement to multiemployer funds.

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NEWS:

FROM THE COALITION FOR WORKERS' HEALTH CARE FUNDS

FOR IMMEDIATE RELEASE

07-08-97

CONTACT: David A. Jewell (202) 293-1735

LABOR-MANAGEMENT HEALTH FUNDS JOIN HANDS TO SUE BIG TOBACCO – SEEKING REIMBURSEMENT FOR MEDICAL BILLS

Washington, D.C., July 8, 1997 — A grouping of labor-management operated multiemployer health care funds (Taft-Hartley Funds) in 14 states with class action lawsuits pending against the tobacco industry, today announced the creation of a coalition to coordinate their activities at the national level.

“These funds are the last line of defense against ruinous health care costs for some 30 million Americans: workers, retirees and their families, and the time has come for the tobacco industry to reimburse these funds for the billions of dollars they have spent to treat tobacco-related illnesses,” said Brian McQuade, Chairman of the coalition.

“The goal in filing these suits is threefold: recompense for the money spent by the funds in treating tobacco-related diseases; to obtain funding for smoking cessation and smoking prevention programs and to hold down the increase in medical costs to our funds,” said McQuade.

“The recently announced 'global' settlement of similar suits filed by state attorneys general and the tobacco industry does not take into account the 30 million men, women and children covered by the Taft-Hartley funds. For some reason, they neglected to take the men and women of the American labor movement into consideration as they pursued their deliberations. However, the pact they signed is now before Congress which will, of course, have the final say.

“What remains to be done, as the terms of this agreement are considered by Congress, is to make sure that the legitimate interests of the millions of workers, retirees and their families are taken into consideration,” he added.

(MORE)



2-2-2-2-2

There are approximately 2000 Taft-Hartley labor-management multiemployer funds in the 50 states, the District of Columbia and Puerto Rico. They provide basic health care coverage for 30 million Americans: workers, retirees and their families. They cover workers in industries characterized by small employers and intermittent and transient work patterns such as building and construction, trucking, maritime, service and clothing.

“Our workers, more than any other class of Americans, have been targeted by the advertising and marketing campaigns of the tobacco industry. Unfortunately, these campaigns have been successful. The percentage of smokers among our members is roughly double the national average,” said McQuade.

“If there is any segment of American society that has been victimized by the tobacco industry and which has paid the price of that victimization from its own pocketbook it is the men and women who rely on these labor-management funds. I cannot for an instant imagine that Congress would codify an agreement of this sort and leave out tens of millions of American workers and their families.

“Our members are not seeking any kind of a handout by filing these suits. They are hard working, tax-paying men and women who have prudently striven to take care of their own medical problems without becoming a burden on society. The vast majority of these funds are self-insured. Every dollar spent for tobacco-related health care costs is a dollar that would otherwise have gone into the workers’ paychecks.

“I am confident that the very last thing Congress would do would be to enact legislation that left millions of American workers and their families out in the cold.

“We look forward to the national debate on this agreement that will take place in the coming months and the meaningful participation in that debate by ourselves and other elements of the American labor movement,” said McQuade.

NEWS:

FROM THE COALITION FOR WORKERS' HEALTH CARE FUNDS

FACT SHEET

LABOR-MANAGEMENT HEALTH FUNDS: PAYING THE MEDICAL BILLS OF 30 MILLION AMERICANS

Labor-management, multiemployer health funds –

- are non-profit trust funds administered by representatives of the covered workers and of their employers;
- are financed by collectively bargained contributions which employers pay on behalf of their workers as part of the compensation for their labor;
- pay the hospital, doctor and pharmacy bills of 30 million Americans — workers, retirees and their family members;
- provide health coverage for workers in industries characterized by transient, intermittent work patterns and small employers e.g., construction, trucking, maritime, service and clothing; many of whom would not have on-the-job health care coverage but for these funds and would be dependent upon government health programs;
- enable workers to move from employer to employer and State to State, without losing health care coverage; and
- cover worker groups targeted by tobacco companies' marketing campaigns; and
- are regulated by federal laws.



**WORKERS' HEALTH FUNDS IN THE FOLLOWING STATES HAVE FILED
LAWSUITS AGAINST THE TOBACCO INDUSTRY SEEKING RECOVERY OF
TOBACCO-RELATED DISEASE COSTS**

Class action lawsuits against the tobacco industry have been filed on behalf of labor-management multimeployer health funds in 14 states and the District of Columbia. They are demanding reimbursement of the costs of providing medical care for workers, retirees and their dependents suffering from tobacco-related illnesses. As of June 30, 1997 lawsuits had been filed by funds in the following states:

CALIFORNIA

Stationary Engineers Local 39 Health & Welfare Trust Fund

HAWAII

Hawaii Health & Welfare Trust Fund for Operating Engineers

ILLINOIS

Central Laborers Welfare Fund
Central Illinois Carpenters Health & Welfare Trust Fund
East Central Illinois Pipe Trades Health & Welfare Fund
Laborers Local #100 Health & Welfare Fund
Laborers Local #231 Health & Welfare Fund
Laborers Local #996 Health & Welfare Fund
Midwestern Teamsters Health & Welfare Fund
NECA-IBEW Welfare Trust Fund
NECA-IBEW Welfare Fund
Northern Illinois & Iowa Laborers Health & Welfare Fund
Operating Engineers #965 Health & Welfare Fund
Painters Local #32 Health & Welfare Fund
Railroad Maintenance and Industrial Health & Welfare Fund
Sheet Metal Workers Local #218 Health & Welfare Fund
Southern Illinois Laborers & Employers Health & Welfare Fund
Teamsters & Employers Welfare Trust of Illinois

IOWA

Iowa Laborers District Counsel Health and Welfare Fund

FACT SHEET 3-3-3-3

KENTUCKY

Kentucky Laborers District Council Health and Welfare Fund

LOUISIANA

The ARK-LA-MISS Laborers Welfare Fund

MARYLAND

Seafarers Welfare Plan;
United Industrial Workers Welfare Plan

MASSACHUSETTS

Laborers Health & Welfare Fund

NEW YORK

Laborers Local 17 Health & Benefit Fund
Transport Workers Union New York City Private Bus Lines Health Benefit Trust

OHIO

Ironworkers Local Union No. 17 Insurance Fund
IBEW Local No. 38 Health & Welfare Fund
Ohio Laborers District Council-Ohio Contractors' Association
Insurance Fund

OREGON

Laborers-Employers Health & Welfare Trust Fund
School District No. 1 Health & Welfare Trust Fund
Northwest Forest Products Association Woodworkers District
Lodge 1, IAM
AFL-CIO Health & Welfare Plan
United Assoc. Union Local No. 290 Plumbers
Steamfitters and Shipfitters Retiree Health & Welfare Plan
United Association Union Local No. 290 Plumbers, Steamfitters and Shipfitters Retiree
Health & Welfare Plan
Office and Professional Employee International Union Local No. 11 Health & Welfare
Plan

FACT SHEET 4-4-4-4-4-4

WASHINGTON

The Northwest Laborers-Employers Health & Security Trust Fund
The Carpenters Health & Security Trust of Western Washington

ARIZONA

RHODE ISLAND

NOTE: *As a class, all individual Health & Welfare Funds in these states have the option of becoming named Plaintiffs and many are in the process of so doing..*

July 8, 1997