

of income taxes, a whole host of questions.

I happen to agree with a number of our colleagues on the other side who want to make it tough, for example, to raise taxes. I am one of the Democrats who voted to do that. But this is not the proper bill on which to have a debate about tax policy. This is not the proper vehicle to have a comprehensive discussion about tax reform. This is about tobacco.

I see our friend and colleague, Senator FORD. He and I serve on the Commerce Committee. We produced a bill that came out of committee by 19 to 1 because we stayed focused on the relevant issues. We didn't always agree.

I have enormous respect for Senator FORD. He has done yeoman's work on the question of making sure our farmers get a fair shake. He knows I feel strongly on key issues: for example, making sure that these tobacco companies don't pay for a settlement in this country by targeting youngsters around the globe. But together, and with our colleague, Senator HOLLINGS of South Carolina, we produced what we think is a fair package. There can be further discussion of those issues. But we stayed focused on the question of tobacco. We didn't raise a whole host of other issues that are important to both of us. We stayed focused on the cause of trying to protect children, recognizing that we would have further discussion of that subject here on the floor. But we stayed focused on the topic at hand.

The fight to stop the cigarette industry from marketing to children did not begin this year. But this is the year we have an opportunity to make real progress. I was a Member of the other body and participated in the hearings held by then-Chairman HENRY WAXMAN. The tobacco executives told me under oath that nicotine isn't addictive. The American people didn't believe them. The Surgeon General of the last 20 years didn't believe them. As a result of that hearing, and the documents that have come out over these many years, we have been in a position to make great progress—progress, for example, that lead to that 19-to-1 vote in the Senate Commerce Committee.

So this debate is the culmination of years of work by those who have been trying to promote the cause of better health for the children in our Nation. We are trying to do it in a way that is going to help kids around the world be healthier. For the first time, we are going to say that you have to protect kids in Oregon and in Texas, and across this country. But we are going to get the Government out of the business of trying to help these tobacco companies sell cigarettes overseas to hook kids in Bangkok and Bangladesh.

That is important. But we are up against tremendous lobbying. The tobacco companies have spent millions. Maybe what we need is a "Million Child March" on Washington, DC, with families, with health professionals, to

show that we are not going to be derailed by these lobbyists. These lobbyists are not going to be allowed to derail the cause of public health in this body. We are going to come back again and again and again in the days ahead.

So this issue is focused on what really counts; that is, protecting children. There is not going to be a death by distraction. There is not going to be a precipitous and unfortunate demise for this bill by virtue of so many other issues coming up and being debated on this floor. We are going to stay focused.

Mr. President, I know of the good work that you have done on this issue. We have fought together on a bipartisan basis to try to protect children in our State. I am looking forward to seeing the kind of spirit that you and I have brought to this issue come to this body as a whole to make sure that we stay focused on the issue of protecting children.

I yield my time, Mr. President.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess, subject to the call of the Chair.

Thereupon, the Senate, at 10:39 a.m., recessed, subject to the call of the Chair;

Whereupon, at 12:30 p.m., the Senate reassembled when called to order by the Presiding Officer (Mr. BURNS).

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

Mr. GREGG. Mr. President, I ask unanimous consent that the Senate now resume consideration of the tobacco legislation, S. 1415, for debate only until the hour of 2 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

A bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg/Leahy amendment No. 2433 (to amendment No. 2420), to modify the provisions relating to civil liability for tobacco manufacturers.

Gregg/Leahy amendment No. 2434 (to amendment No. 2433), in the nature of a substitute.

Gramm motion to recommit the bill to the Committee on Finance with instructions to report back forthwith, with amendment No. 2436, to modify the provisions relating to civil liability for tobacco manufacturers, and to eliminate the marriage penalty reflected in the standard deduction and to ensure the earned income credit takes into account the elimination of such penalty.

Daschle (for Durbin) amendment No. 2437 (to amendment No. 2436), relating to reductions in underage tobacco usage.

Ford amendment No. 2707 (to amendment No. 2437), to provide assistance for eligible producers experiencing losses of farm income during the 1997 through 2004 crop years.

Mr. GREGG. I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KERRY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

AMENDMENT NO. 2707, AS MODIFIED

Mr. FORD. Mr. President, I send a modification of my amendment that is pending at the desk. The only thing I am doing is changing a section of reference.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 2707), as modified, is as follows:

At the end of the amendment, insert the following:

SEC. . INAPPLICABILITY OF TITLE XV.

The provisions of title XV shall have no force and effect.

SEC. . ASSISTANCE FOR PRODUCERS EXPERIENCING LOSSES OF FARM INCOME.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, from amounts made available under section 1012(3)(A), the Secretary shall use up to \$250,000,000 for each of fiscal years 1999 through 2004 to establish a program to indemnify eligible producers that have experienced, or are experiencing, catastrophic losses in farm income during any of the 1997 through 2004 crop years, as determined by the Secretary.

(b) GROSS INCOME AND PAYMENT LIMITATIONS.—In carrying out this section, the Secretary shall, to the maximum extent practicable, use gross income and payment limitations established for the Disaster Reserve Assistance Program under section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a).

(c) EFFECT ON OTHER PAYMENTS.—The amount available in section 1012(3)(A) for tobacco community economic development grants under section 1023 shall be reduced by any amount appropriated under this section. None of the payments made under this section shall limit or alter in any manner the payments authorized under section 1021 of this Act.

Mr. FORD. I thank the Chair.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, let me speak for a moment to the question of where we appear to be, although no final decision I know has been made by leaders.

But it is clear that at some point today, if events flow the way they have been discussed, the majority of the members of the Republican Party are going to try to kill this bill. And they are going to try to kill this bill either through a cloture motion—depending on what decision is made as to when that vote might be able to take place—

or through a tricky little budget point of order parliamentary procedure that should have, in fact, taken place at the outset when this bill came on the floor. The notion that, 3 and a half weeks into a debate, to try to reduce our kids from smoking, that all of a sudden somebody thinks, "Oh, my gosh, there is a budget point of order we ought to bring," is rather extraordinary in and of itself. There is no way to hide. The old saying is, "You can run, but you can't hide." You can run from the tobacco bill, but you can't hide from the effect of the vote.

The effect of the vote today, or tomorrow, or whenever it occurs, will be either to side with children in order to reduce smoking in this country or to side with the tobacco companies. I know that there are colleagues on the other side of the aisle who are running around with polls that have been taken, and those polls show, "Gee whiz, some people in the country are beginning to see this bill differently." And that is because millions of dollars have been spent by the tobacco companies to present a rather one-sided point of view.

But the fact is that most people in America understand that they want their kids to be able to stop smoking. They want their kids to not be exposed to the increasing number of pressures that are applied to young people with respect to smoking, and they know that in States like Massachusetts, Arizona, California, and others there are very effective outreach efforts that are being made with young people that are reducing smoking.

In the State of Massachusetts, we have seen a reduction of some 30 percent over the last few years because of a very intensive State program which needs more help. The people in the State know that they can change that 30 percent into 70 percent or 80 percent if they have adequate capacity to be able to do that, adequate resources for materials, for outreach, adequate cessation programs, and adequate counteradvertising to the impact of the millions of dollars that the tobacco companies spend. All of these things are critical to the ability of kids to be able to make up their mind.

I think most of us in the Senate understand that kids are most impressionable with respect to something like smoking at the ages of 11, 12, 13, all the way through their teens. No one here disputes the fact that every single analysis shows that 86 percent of all the smokers in America began when they were teenagers. Eighty-six percent of the adults who today are hooked on nicotine, on tobacco, began as teenagers. Ninety percent of the kids in America recognize Joe Camel more than they do—or equivalent to—Mickey Mouse. And the statistics show that of those cigarettes advertised, Newport, Marlboro, and so forth, the brands that have the highest level of advertising, are the brands that kids smoke but not the brands that adults

smoke, which tells you a story—that when they become adults, they make a different set of choices than just the bombardment of advertising. But when they are kids, the cigarette they pick up is the cigarette that is most put and shoved in front of them by the advertising. There isn't anybody who doesn't understand.

The Senator from Arizona has talked about the impact on his 13-year-old daughter of movies—the "Titanic," for instance, Leonardo DiCaprio, who spends his whole time in the movie smoking when he isn't fighting water. I mean that is basically the heart of what the Senator from Arizona has said affected his child.

And all across this country, Mr. President, those are the kinds of influences. There isn't a parent in America who doesn't understand that. There isn't a person of reasonable common sense who doesn't understand that.

So why don't we try to do something about affecting the impact of those role models and the impact of the pressures of young people. We have had testimony from a young woman—and she is not alone, this is just one example—who talked about when she was a teenager, she thought it was going to make her look older if she smoked. She thought it was going to make her more acceptable to teenagers who were older than her; she could run in a group that somehow made her feel better. So she started smoking. Today she is in a wheelchair and raising a couple of kids because she developed a smoking-related disease in her lungs. She has had a lung transplant, and she looks older. She tells people of the impact of smoking on her life.

Are we going to just ignore that in the Senate—all of the evidence of what the tobacco companies have done through the years saying they targeted kids? They know they have got to have replacement smokers. Here we have an opportunity to vote, and our colleagues on the other side of the aisle have decided they are going to side with the tobacco companies.

That is what the vote before the Senate will be, plainly and clearly. You cannot make it into some sort of subterfuge. You cannot run and hide by a budget waiver. You cannot create some parliamentary trick. And you certainly cannot duck with one cloture vote and suggest that this issue, which we have spent 3½ weeks on, is going to go away.

Who is for this bill, Mr. President? Well, there are more than 40 Democrats prepared to vote for this bill now. So there will be no question if this bill doesn't move forward as to why it can't move forward. But every single public health group in America is for this bill. The lung and cancer associations are for this bill. All of the surgeon generals of our country are for this bill. Teachers are for this bill. Child care and day care specialists are for this bill. Forty attorneys general across the country want this bill.

Who is opposed? Who is opposed? The tobacco companies. The tobacco com-

panies and some number of Republicans who choose to be with them. That is who is opposed to this bill—the tobacco companies. No one else is spending millions of dollars trying to characterize this bill on a daily basis in the Nation. No one else is out there suggesting that somehow what the tobacco companies agreed to do, which is raise the price of cigarettes, is a tax increase.

I hear these Senators who come to the floor and say, oh, this is a tax increase; we can't do that. That is a phony argument, Mr. President. That is looking for an umbrella to hide under. That is a way of running around and trying to find something to hang your hat on, not wanting to do what most health care advocates—teachers, child care specialists, surgeon generals, attorneys general, and others of this country—want to do. The only beneficiaries if this bill does not go through are the tobacco companies, plain and simple.

The fact is that we have never heard anybody be able to dispute the notion that of the 60,000-plus kids who in the course of this debate have begun smoking, somewhere in the vicinity of 20,000 of them are going to die early. And they are going to die at the expense of every other citizen in America. We have heard a lot of concern by the people who come to the floor and talk about how terrible the raising of a pack of cigarettes is going to be for the blue-collar worker who is going to buy the pack of cigarettes, but no one in the Government is telling them they have to go buy the pack of cigarettes. But that very same person who is buying the pack of cigarettes, or all of those families who do not buy a pack of cigarettes are paying a lot more of their hard-earned tax dollars to cover the costs of those people who get sick—Medicare and Medicaid, Government dollars paid, tax dollars paid out to the tune of \$25 billion a year because of people who are sick because of smoking. The cost of smoking is far greater to the average taxpayer than the cost of the rise in the price of cigarettes.

You cannot hide under that one. That is not what is happening here. That is not what this is all about. What we are seeing is a fear by some in the House of Representatives that they might have to actually vote on this bill. What we are seeing here is that NEWT GINGRICH and some of those in the House have put a contract out on this bill. They do not want this bill. They want their friends in the Senate to kill this bill so they do not have to vote on it.

But this bill will not go away. It will not go away for the next months in the election. It will not go away even on the floor of the Senate, because somewhere, sometime, somehow it is going to keep coming back. You cannot run away from a bill that has most of the people in this country believing it is a good bill, who believe it is an important objective.

Now, if it isn't good—I heard one Senator say, "I can't vote for that bill;

it's all loaded up." Who loaded it up? Mostly Republican amendments that have been passed for things that have nothing to do with smoking. There were Republicans who came to the floor and said, "We have to have a bill that has a tax cut in it; we can't vote for a bill without a tax cut." So almost one-third of the money of this bill has now been voted to go to a tax cut. So the Republicans got their tax cut.

Then a Republican came to the floor and said, "I can't vote for a bill that doesn't have a drug plan in it." So we had a big debate and now the bill has a drug plan in it.

And then we have three different attempts to try to curb attorneys' fees. People said, "I can't vote for a bill that is going to have a whole lot of money that wasn't earned going out to attorneys," notwithstanding the fact that not one penny has been paid to attorneys, nor will the money be paid out of the bill because it is being paid by the companies.

But leaving that reality aside, the Senate nevertheless passed a curb on attorneys' fees. So our friends on the Republican side of the aisle are not going to say no to this bill because it does not have a tax cut. They are not going to say no to this bill because it doesn't have a fat and firm clamp on attorneys' fees. They are not going to say no to this bill because it doesn't have a drug plan. They are going to wind up saying no to this bill because that is what the tobacco companies want them to do.

So that is the choice. That will be the choice today—very, very clear—a choice between kids and the tobacco companies. And anybody who suggests, oh, no, I am not for the tobacco companies; I just want to make a good bill, let's make a good bill. Let's vote on the amendments the way we have been doing to make a good bill. And there is not anybody in the Senate who does not understand that this bill is going to go to a conference committee if the House ever voted on it, and it has the ability to be rewritten in that conference committee and to come back to the Senate differently.

In the 14 years I have been here, I have seen plenty of legislation leave this floor where one side or the other disagreed bitterly with some component of it but everybody knew it would be fixed in conference committee. Why is it suddenly they do not want this bill, of all the bills, to go to the conference committee? They do not want to let it be fixed. They do not want to give it the opportunity to come back to the Senate in a shape that might be voted on, because that is not what the tobacco companies want. They do not want a bill. They walked away from all of this. It was fine.

I know there are Senators on the other side of the aisle who were ready to vote for this bill only a few weeks ago, or even a few months ago, when the tobacco companies were part of the process. It was a good idea. Oh, yes, it

is inevitable; we are going to do that; we are going to fix it up for our kids.

But all of a sudden after the money has been spent, after all of the flow of those tobacco dollars, there is a different attitude in the Senate about what is possible and what is not possible. I respectfully suggest that no one is able to pull a curtain down over that reality. If people want to fix this bill, we can fix this bill.

Every piece of legislation that came to the floor this year came to the floor with a Republican cloture motion attached to it—every bill. Every bill has had limited debate, except for this bill. Every bill we had to push through here rapidly, except for this bill. This is the one bill where there is one identifiable group that does not want it, and that identifiable group has enlisted soldiers in its army. The question is going to be whether or not the Senate has the courage to stand up and say: We are going to fix this bill; we are going to work on this bill; we can bring this bill together.

We could have had any number of discussions about how to fix any number of difficult components of the bill, but the bottom line reality is that every study shows in order to keep kids from smoking, you have to raise the price of cigarettes. Even the tobacco companies agreed to that. Even the tobacco companies agreed to that.

They came to an agreement in a global settlement, where they agreed to raise the price of cigarettes. But it is only when that rise in the price of cigarettes was geared to be something meaningful, that would actually have an impact on kids smoking, and only when they began to see that there were still going to be some lawsuits they would have to defend, that they began to see the balance differently.

Frankly, there were some of us in the Senate who thought we understood that there was a legitimacy to trying to create that balance and hold it differently. But I think most people in the Senate understand that anything that is to go to the conference committee will come back with an ability to try to find that balance again and find the ability to pass a good piece of legislation.

I know there are some colleagues on the other side of the aisle who are very uncomfortable with what is happening. There are friends of mine, members of the Republican Party, who want to vote for a bill, who want to do something for kids, who want to be able to help out. I know there are some feeling the difficulty of what is happening right now. My hope is that people will simply recognize the reality. This is not an issue that grew up spontaneously within the Democratic caucus. This is not an issue that became the brainchild of some political strategy on behalf of Democrats. This is something that grew up out of kids and parents and teachers and doctors and health care specialists and surgeons general and scientific evidence, and

even the tobacco companies' own documents, which gave birth to the notion that raising the price of cigarettes is a critical component of reducing teenage smoking.

I read those documents on the floor of the Senate a number of weeks ago—I guess maybe last week. It is all somewhat of a blur at this point. But the Senate knows the tobacco companies have acknowledged that they lost business when they raised the price of cigarettes. They know, as all evidence shows, that no group in America is more price sensitive, more subject to the pressures of how much cash they have in their pockets and what they spend it on, than young people.

So we have the ability to make a difference. The choice before the Senate is really going to be very clear. My hope, obviously, is that the Senate will act responsibly. If we are not happy with the bill in its current form, notwithstanding the fact that there are 40-plus Democrats prepared to vote for it in its current form, then we should continue to work and continue to be serious, rather than to continue an effort that just wants to kill it for the victory for those individuals and entities who want that victory, rather than putting together a meaningful piece of legislation.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank my colleague from Massachusetts for his remarks. I thought maybe it would be useful to come to the floor and just review how we got to where we are, why this legislation is important, and why it matters to American families.

Months ago, I was called by our leader, Senator DASCHLE, and he asked me to head up the task force for Democratic Senators on the issue of tobacco. He did so after the settlement was agreed to in June of last year between the attorneys general, representing about 40 States, and the tobacco industry. That settlement, which was advertised as a settlement of close to \$400 billion over a 25-year period, was also a settlement which was designed to not only raise prices to discourage consumption, but was also designed to have countertobacco advertising, smoking cessation, smoking prevention programs—all of it designed, really, to safeguard the public health and to reduce youth smoking.

The focus was on reducing youth smoking, because we all know the vast majority of smokers take it up as teenagers; about 90 percent of smokers start before they are age 19. Nearly half start smoking before the age of 14. As the tobacco industry has revealed in the documents that have come out in the court cases, if somebody is not hooked when they are young, they do not get hooked. That is why the tobacco industry has put such a focus on young people. That is why they have marketed to young people. That is why they have advertised to young people.

Because they know that is the future of their business.

I have read on the floor of the Senate quote after quote of the industry itself that have demonstrated that was the rationale behind the tobacco industry strategy. It was a business strategy: You target young people because people don't start smoking when they are older. They don't start smoking later in life because they have seen enough to know that it is not a very pretty habit, and they also get a sense of the health risk involved.

So this is really a question of trying to encourage young people not to take up the habit. The industry has to get some people to be replacement smokers because they are losing over 400,000 customers a year. They are losing them to death. This is the only legal product sold in America that, when used as intended by its manufacturers, addicts and kills its customers. That is strong language. Those are strong words. But they are the truth.

After accepting Senator DASCHLE's assignment to head up the task force on tobacco, we held about 25 hearings across the country. Many of them were here in Washington. We listened to every point of view from any people who wanted to have a chance to express themselves. We listened to the tobacco industry. We listened to those who are in the distribution chain. We listened to the convenience store owners. We listened to the vending machine operators. We listened to tobacco farmers. We listened to Dr. Koop and Dr. Kessler. And we listened to the public health community: The Cancer Society, the Lung Association, and many more. We listened to those who are advocates of strong legislation. We listened to those who said Government ought not to be involved, let this go through the courts.

We concluded that it was best if the Government did take action, that it was best not to leave it to a free-for-all in the courts that might ultimately bankrupt these companies. Nobody is out here advocating that we stop the use of tobacco products in this country. After all, there are nearly 50 million smokers in America. We have had a bitter experience with prohibition. It does not work. But what could we do that would discourage youth smoking and protect public health?

In holding these hearings and listening to the experts and listening to just common citizens all across the country, over and over they said: Look, you need a comprehensive package. Don't just leave this to the courts. If you do, you wind up perhaps bankrupting these companies. That will not end the use of tobacco products in America. Simply, what will happen is we will wind up with a circumstance in which new companies come and fill in the gap, and the companies that are bankrupted will have no capability to cover the costs that they have imposed on society. Those are very, very significant costs. Those costs are variously estimated at

\$130 billion of costs being imposed on this society—\$130 billion a year.

The legislation before us would require the industry to pay \$18 or \$20 billion a year when fully phased in. That in no way covers the costs they are imposing on society. But that is not all the people who came before our task force told us. They said: You have to have a comprehensive plan. Yes, you have to raise prices to discourage consumption, but you need to do much more than that. You have to have the Food and Drug Administration have regulatory authority over this product, just like they have regulatory authority over other drugs in this society. But you have to go further than that. You have to have a comprehensive plan of public health. You have to have countertobacco advertising, so people hear a message other than the message they get from the tobacco industry, with the billions of dollars a year they spend in advertising and marketing. And you also have to have smoking cessation and smoking prevention programs to help those who are about to start, to give them a chance not to be hooked; and for those who are addicted, to give them every assistance in stopping.

(Mr. GREGG assumed the chair.)

Mr. CONRAD. Mr. President, obviously, there is more to the program than those elements, because we have to remember how this all started. It started with the States bringing legal actions against the tobacco industry. They are the ones that had the initial settlement with the tobacco industry. So, obviously, the States have to be compensated for the legal actions that they have pending.

In addition, the Federal Government has potential actions against the tobacco industry, because Federal taxpayers are paying for Medicare and Medicaid and veterans' health programs, all of them that have had costs imposed on them because of the use of tobacco products.

Mr. President, it was those concerns that led this Congress to take action. It was those concerns that led the Commerce Committee to consider the legislation sponsored by Senator MCCAIN, and they reported out a bill on a 19-to-1 vote, an overwhelming vote.

In the Senate, we have considered a series of amendments that have somewhat altered the work that they did in the Commerce Committee. We have considered amendments to provide a significant tax reduction in addition to the other provisions that were in the bill. About a third of the money now will go for a tax reduction.

But there is more than that. There has also been amendments added that deal with the question of illegal drug use in this country. The Coverdell amendment that was adopted here on a very strong vote is included in this legislation.

What we now have before us is really a comprehensive package. A lot of people say, "Gee, this isn't my idea of a

perfect bill." It is not my idea of a perfect bill either, but we have not yet completed action on it. That is the legislative process—to take a package, to work on it, to offer amendments and to have the votes of Senators dictate the outcome. That is the way it works. So far, that process has gone reasonably well.

Again, we certainly don't have a perfect bill, but it is one which is comprehensive in nature and does offer the prospects of protecting the public health and reducing youth smoking. We have 420,000 people dying every year in this country because of tobacco-related illness. That is a statistic, but it is a statistic that has 420,000 different stories behind it. In hearing after hearing, we heard those stories. We heard the suffering of families and of individuals who have been hooked on tobacco products and have suffered the consequences.

I remember so well a Pierce Fravenheim, big tough guy in Newark, NJ, a former football player, football coach, assistant principal. When he came to testify, you could barely hear him speak. You could barely hear him speak because after a lifetime of smoking, he developed cancer of the larynx. He had undergone a laryngectomy. He told us of the terror he felt when the doctor told him he was going to die unless they did this procedure, and even if they did it, he might not survive.

In a way, he is lucky because he did survive, and he is there to tell the story. He told us how deeply he hoped that others could be dissuaded from taking up the habit, how deeply he hoped that others would not experience the terror he felt when the doctor told him he might die.

There are hundreds and thousands of stories just like Pierce Fravenheim's that we heard as we went around the country listening to people, many of them begging us to pass legislation that would do something to deter others from taking up a habit that would addict them, that would create disease in them and that would ultimately kill them.

Again, nobody is out here proposing that we have prohibition, make the product illegal. Nobody is proposing that. But we are proposing comprehensive legislation to try to do something to lessen the hurt, the pain, the suffering and the loss of life that occurs directly because of the use of these products.

Mr. President, there are those who will take this bill and flyspeck it, and they will have 100 reasons to be against it, maybe several hundred reasons to be against it. That is the nature of a comprehensive bill. I could probably point to dozens of different provisions that I don't particularly like in this bill, but that isn't the question.

The question before this body is whether or not we are going to advance, whether or not we are going to move forward, whether or not we are going to give this legislation a chance

or whether or not we are going to snuff it out right here today on the floor of the U.S. Senate and say, "No, we give in; the big tobacco industry advocates and defenders win."

I hope that is not the outcome here today, Mr. President. The tobacco industry does not exactly come to this Chamber with its credibility intact. The tobacco industry came before Congress and said, "Oh, no, our products don't cause health problems." At the time they said it, they knew, and the documents reveal that their products cause serious health problems. And that same industry came before this Congress and said, "Oh, no, we don't target children; we wouldn't do that. It is illegal to sell to children."

We now know from the documents of the industry itself that, in fact, they have targeted children. In fact, they have targeted kids as young as 12 years old, and I have shown the charts and the quotes day after day on the floor of the Senate that demonstrate conclusively that they have targeted our kids. This industry has come before the Congress and said, "We don't have nicotine in there to addict people. It is not addictive." And yet, again, their own documents reveal that nicotine is addictive. In fact, their own documents compare it to cocaine and to morphine. These are their words, not my words.

This same industry has come before Congress, and they have told us, "Look, we have not manipulated nicotine levels to further addict our customers," and when you look at the record, when you look at the documents, what you find is that is precisely what they have done.

This industry does not come with a great deal of credibility to this Chamber in arguing on behalf of this legislation. Rather, I should say in opposition to this legislation, because they have made it clear, although they supported a version early on that would have basically taken their settlement and made that into a legislative vehicle, they supported that, but as soon as we started stripping away the special protection that was in that proposed settlement, an amendment by the occupant of the Chair, an amendment that was adopted overwhelmingly in the U.S. Senate and stripped out all the special protection that this industry was seeking, special protection that was unprecedented, special protection never provided any other industry in the history of our country, all of a sudden they said, "Oh, no, we don't want anything to do with this legislation. If we can't get special, unprecedented protection, we're out of here." That is what the tobacco industry said. Now the tobacco industry is in total opposition. And day after day, hour after hour, we hear their adds in the national media opposing this legislation, attacking this legislation.

Mr. President, it is important, I think, for us to understand what is here and what is not. We have, I think, the best indication: The recent polling

that has been done that shows the American people strongly support this bill. It is different than saying this legislation is their top priority, because it is not.

The American people have lots of things to be concerned about. They are concerned about their jobs; they are concerned about getting their kids into college and paying for it; they are concerned about having their families safe and secure in their neighborhoods; they are concerned about the health care of their parents and of themselves and of their children.

Mr. President, they are also concerned about doing something to protect their kids from the addiction, disease, and death brought by the use of tobacco products. Most recent polling shows very clearly the American people support this legislation. When they are asked to choose between this legislation and no legislation, they say, "Pass this bill." By 2-to-1 margins they say, "Pass this bill."

This is a poll that was just taken by the ENACT Coalition. It shows the voters in the United States support this bill by 66 percent to 32 percent.

It is interesting, because we are going to have a vote, perhaps today, on the question of whether or not we move forward. Some will say, "Let's just kill the bill." That is what the tobacco industry wants. That is their argument. And their defenders and their apologists will be making that argument. The American people say, "Pass this bill." Let us have a chance to protect the public health and reduce youth smoking.

Mr. President, I am very hopeful that my colleagues will let us move to conclusion on this legislation. We are now in the fourth week of consideration on the floor of the Senate—4 weeks. We ought to complete our work. We ought to send this bill to the House of Representatives, give them a chance to do their work, and then go to the conference committee to work out the differences and produce legislation that can be brought back to both Chambers for a final decision. But we should not end the process now. We should not kill this bill before it has even cleared the first hurdle.

Mr. President, I hope my colleagues will say yes to protecting our kids' health and say no to the tobacco industry that has waged a campaign of deception and diversion in an attempt to delay and ultimately derail this bill.

I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I rise in opposition to this bill. And I take offense to some of the comments that were made by some of our colleagues on the other side of the aisle who said, that anybody who wants to kill this bill is an instrument of big tobacco.

That's simply not true. I did not support this deal when the tobacco industry and the administration and attor-

neys general got together and made a deal. They didn't consult this Senator. I was never in favor of the deal they were in favor of that some people have tried to promote and some people have tried to push, including, this administration. So let me just make that very clear.

Now, I have many reasons to oppose this bill, and I am going to enumerate these. Not one of them has anything to do with the way the tobacco industry wants this Senator to vote. And so people making allegations—I wonder if that can be turned the other way around, but I am not going to do that. I do not impugn people's motives or their integrity. I think people have the right to make decisions on whether or not legislation is good legislation or bad.

I spent a little bit of time studying this legislation. And everybody is entitled to their own opinion. They can brag on the legislation; they can be critical of it. I am going to be critical of it. I have read the legislation.

First, let me just comment on a comment that the President made. It was reported in the Washington Post recently, Monday June 15. This past Monday, President Clinton said his critics contend that "this [is a] dark scheme in Washington to build some new federal bureaucracy, and it's the biggest load of hooley I ever heard in my life."

So President Clinton thinks that those of us who are critical of this legislation, who say this is just a big bureaucracy, that that is just a big bunch of hooley—as a matter of fact, "the biggest load of hooley I ever heard in my life."

I told my colleagues this is one of the worst pieces of legislation I have seen in my Senate career. The only thing I can think of that was worse was the health care legislation promoted by President and Mrs. Clinton.

Mr. President, this chart that was put together by the Budget Committee, showing where the money was coming from, where the money goes, on Commerce I—and that was the bill that was reported out of the Commerce Committee—shows that the President was incorrect. This is a lot of new government. There are about 30 new programs, spending hundreds of billions of dollars, all above budget, all outside the budget. So I just think the President is incorrect. And I wanted to make that comment. He is entitled to his own opinion, but I think we are entitled to look at the bill and we are entitled to look at the facts.

This is Commerce II. This is the bill that the administration basically had rewritten—the bill. And this is the bill that we have on the floor, although it has been added to. And we have new mandates and new spending, and a tax cut and a drug provision. I don't show those on this chart. But this is the current bill that we have before us.

There is a lot of new government in this. So the President calls its

“hooley.” My comment is, these just happen to be the facts. That is what this bill has in it. This bill has a lot of money in it. It has a lot of spending in it. And I want to get into that because a lot of people have said, “Well, this bill, it is really only a \$65 billion bill. It only raises taxes by \$65 billion.” And this Senator, for one, has been saying, “Wait a minute. It’s a lot more than that.”

Where does this thing say in this bill, if you look at the bill and look at the language of the bill—and I would encourage my colleagues to do so, and anybody else. I had to ask unanimous consent to get the bill printed. The committee printed the Commerce I. They did not print Commerce II. This is the bill we have before us that is now printed on the Senators’ desks.

If they would look at the bill, maybe look at page 183 of the bill, it talks about annual payments. The bill does not say anything about 65 cents a pack; it does not say anything about \$1.10 a pack. It does say consumers pay \$10 billion the first year, \$14 billion the second year, \$15 billion the third year, \$17 billion the fourth year, and \$21 billion in the fifth year, without even considering look-back penalties.

So if you total that, that is all \$102 billion. That is what the bill says—\$23.6 billion in the fifth year. And after that, those amounts are adjusted by inflation. That is on page 183 of the bill.

If you put those figures in and you adjust them for inflation—it says 3 percent or inflation, whichever is greater. I just plugged in 3 percent. You do that, and you come out with \$755 billion over 25 years. What is this nonsense we hear, “Well, we think it’s only \$516 billion”? This is \$755 billion. That is in the bill. That is what we are considering, not \$516 billion.

And then the look-back potential. I show \$130 billion of look-back potential. I say “potential” because it can be assessed. No one knows exactly how much that will be. But evidently a lot of people felt it should be much more, because this chart is obsolete.

My colleague from Illinois, Senator DURBIN, had an amendment to increase this to \$7.7 billion and then index that for inflation. As a matter of fact, if you put the new figures into the chart, this \$130 billion goes to a maximum of \$241 billion. So you add that to the \$755 billion and you get really right at \$1 trillion—\$1 trillion potential tax on consumers. And I say “tax on consumers” advisedly, because this bill mandates that 100 percent of this money be paid for by consumers. It does not say, “Tobacco companies, you pay this.” Basically, it says, “Tobacco companies, you pass this cost on. You pass every dime of this on.”

So I make the point we are talking about, President Clinton may think it is a bunch of hooley, but this is a big government bill.

It has lots of new agencies and hundreds of billions of dollars of new spending. With the new look-back po-

tential, up to \$1 trillion in money transferred from consumers to government.

I make those points because I think it is important that we know the facts. Some people say this is not a budget buster, this is responsible, we are raising taxes. This bill doesn’t say anything about taxes. It says these funds shall be paid, and 100 percent of the funds shall be passed on to consumers. It is not clear. It is not direct. It is confusing. And it is hard to tell exactly who is taxed how much.

I will give an example. If a person looked at page 186 of the bill, we find out there are exclusions for some companies. To give an example—I looked this up—Marlboro, a Philip Morris brand, would have to pay presumably a price per pack of \$1.10 more; this brand, Chesterfield, by the Liggett Group, pays zero. Now, both companies presently pay 24 cents per pack. Both of them do. Under this bill, supposedly, the price per pack on this item goes up \$1.10; the price on this item goes up zero. So they will have a \$1.10 advantage over all other competitors. Why? Because their sale volume isn’t so large? Wait a minute; is that good tax policy? They have the same excise taxes today, but we are going to give a \$1.10 advantage to one company versus another company? We do that in this bill? That doesn’t make sense.

We did the same thing in other tobacco products. Looking at smokeless tobacco, again if a person looked at page 186, we find out some companies have a significant differential. This product, Copenhagen, is made by U.S. Tobacco Company. This product is Kodiak, made by Conwood Company. Both have a current excise tax of 2.7 cents per product.

This product made by U.S. Tobacco, the new tax increase is 82.5 cents; that is a 3,056-percent increase. This product, the tax increase is 57.8 cents; that is a 2,141-percent increase. This has a 25-cent advantage under this bill. This product has a 25-cent advantage. Why should we be choosing winners and losers in this bill? Is that good tax policy? Is that good consumer policy? We will encourage some people to buy this product over another product, but in the language in this bill on page 186, it gives certain items a competitive advantage over their competitors. Is that right? Is that in this bill? Sure it is in this bill. It is on page 186. I mentioned it on the floor before, and at some point I plan on addressing it if this bill stays on the floor.

So the President said it wasn’t a bunch of new government and I showed the charts. There is a lot of new government, tons of new government. There are new taxes that run into almost \$1 trillion over 25 years. The money is all off budget, and that bothers me.

Somebody was complaining Republicans may make a budget point of order. We well should. If a person looked at page 181 of the bill, talking

about the national trust fund, it says, “The amount of such appropriations shall not be included in the estimates required under section 251 of the act,” talking about the Budget Act. So all the appropriations that were mandated out of this trust fund shall not be included in the budget, the budget that the President signed just last year with both Houses, the House and the Senate, and I will say with bipartisan support. We finally did get a budget that was supported by Democrats and Republicans. The President said we will stay by these caps. Even at the State of the Union, we will not spend one dime, not one dime unless we don’t cut taxes. We want to save Social Security.

But what he does in this bill is basically ignore the budget. The budget makes no difference. All this spending, hundreds of billions of dollars, are over and above the budget. They don’t count towards the cap. They don’t count toward the budget. It is over and above. All the taxes are above, all the expenditures are outside the budget realm. So certainly a budget point of order lies against this bill. As a matter of fact, if we don’t make a budget point of order, I think we just might as well say we don’t have a budget. There is no need to have a budget. There is not a budget.

Why should the conferees, and I am a conferee on the budget for this year’s budget, why should we worry about a budget if we are going to pass a bill that has tax increases and expenditures larger than any tax cut that anybody else is talking about in the budget that the President signed last year or in the budget that we are talking about this year? This has a larger tax increase, larger spending increase, than either the budget that was passed last year or the one that is contemplated for this year. So why have a budget, if it will all be outside the budget as stipulated on page 181 of the bill?

So my colleague who earlier said we have taken a poll and now the people by some majority support this bill—they don’t know what is in this bill. If you told the people that we are giving one brand of cigarettes an advantage of at least \$1.10 over another brand, would they say that is fair? Don’t we have a constitutional responsibility to be fair? Or if you are giving one smokeless tobacco product a competitive advantage over another one, does that make sense?

What about some of the other tax provisions—if a person looked at page 104 of the bill, it talks about the look-back assessment. The look-back penalties, which I mentioned in the earlier charts originally, were \$2 billion under the settlement, \$4 billion under the Commerce Committee bill, Commerce II, the last bill we had on the floor, and then we had an amendment to increase the look-backs to \$7.7 billion a year and index those for inflation. Who determines whether there is a look-back penalty or assessment or tax? The Secretary of Health and Human Services.

How does she determine it? She takes a poll; she does a survey. It is in this legislation. She does a survey. I am talking about Secretary Shalala, the Secretary of Health and Human Services. She does a survey, and from the survey she has the power to assess fines, penalties or taxes equal to \$7.7 billion a year. That is an unbelievable transfer of authority, of taxation authority, to the Secretary of Health and Human Services.

In her survey, under the legislation, the survey-using methodology required by this subsection is deemed "conclusively to be proper, correct, and accurate for purposes of this act." So her survey is deemed by this act, deemed to be correct, deemed to be accurate. And she has the capability to assess fines and penalties up to \$7.7 billion per year, an unbelievable power of taxation by her survey which Congress is deeming to be correct. So they can assess companies \$1,000 for whoever answered the survey wrong or inappropriately according to her wishes. Unbelievable power.

Then we passed an amendment, I believe it is Senator REED's amendment, that said we will deny deductibility of advertising to tobacco companies if they don't comply with FDA advertising restrictions. That is now part of this bill. What does that mean? FDA promulgated a long list of rules which, incidentally, I will comment on in a minute. This legislation deems to be law. That is interesting. But in the amendment Senator REED says if they don't comply with FDA advertising restrictions, then they will lose deductions of their advertising. Basically, what we have done now is turned the power to tax over to the FDA. Now, that is unconscionable for those who think the power to tax belongs to Congress, not to a bureaucrat, a bureaucrat that may or may not have an agenda.

And if one thinks that all the FDA regs are accurate and make sense, one of the regs is that you can't have any tobacco sponsorship for sporting events. The Indianapolis 500 comes to mind. An automobile runs around with "Marlboro" painted on the side. If you had that, or the driver had "Marlboro" on the side, it would be a violation. They would lose deductibility of all their advertising expenses. Or even if you had a hat that said "Marlboro" on it, or "Winston" or "Salem" or whatever, any tobacco product, if you had a hat or T-shirt or car that had that emblem, you are violating the FDA advertising restrictions and therefore you would lose your deductibility.

So we would have tax policy being set, one, by the Secretary of Health and Human Services, and another by FDA. The combination of that is probably the worst tax policy I can imagine. Unbelievable.

On page 99 of the bill, we do something else dealing with FDA regulations, and Congress is a legislative body. We are supposed to legislate. If

we want to ban advertising of tobacco products, we should do it. Somebody should introduce a bill to ban advertising. We didn't do that. FDA promulgated some rules restricting tobacco sales, labeling and advertising.

On page 99, it talks about the rules, and it says, "The code of Federal regulations dealing with tobacco are hereby deemed to be lawful and to have been lawfully promulgated by the secretary under Chapter 9 in Section 701 of the Food and Drug Act." Here is a whole list of FDA regulations. This bill deems them to be the law, makes them the law. I am bothered by that. If somebody wants to make it the law, let them try to pass a bill—we are the legislative body, not FDA—not taking a whole section of FDA regs, some of which make no sense whatsoever, some of which are not workable.

Here is one example. One reg deals with checking IDs, identification on people when they purchase tobacco products. Every State in the Nation has a law, and it is against the law to sell tobacco products to teenagers, people less than 18. Some States have higher age limits. They said we need to check that, and the rule said they are going to check the identification of people up to age 27. And if a convenience store, or something, doesn't comply, they are subjected to fines and penalties, which range, for the fifth violation, up to \$10,000. Wait a minute, that isn't in the bill. But the bill says they are all deemed to be lawful. So we are making it law by this one paragraph on page 99.

Now, if we stay on this bill, I am going to have an amendment saying, wait a minute, should it be against the law for a convenience store not to check the identification of people up to age 27? The law is 18. You could have a combat veteran of the Persian Gulf who is 26 years old and has four kids, and somebody could be fined up to \$10,000 if they don't check his ID. Obviously, he is older than 18. Yet, the FDA reg says you check their identification, and if they are less than 26 or 27 and you didn't check the ID, you are subject to fines and penalties up to \$10,000. And we are codifying that; we are deeming that to be lawful. That bothers me. That is crummy legislating. That is not good legislation.

We have another provision that I don't even know many of our colleagues are aware of. They had better become aware of it if, Heaven forbid, this becomes law. This bill prohibits smoking of cigarettes in almost any building in the United States. I will read you the language. It prohibits the "smoking of cigarettes, cigars, pipes, and any other combustion of tobacco within a facility or on a facility or property within the immediate vicinity of the entrance to the facility." I could go on. How is "facility" defined? It means "any building used for purposes that effect interstate or foreign commerce, regularly entered by 10 or more individuals at least one day per week."

Unbelievable. Unless you have a real small building, you are going to be covered by this ban. So we are banning smoking on almost every single building—certainly every business building in the United States, or significant business building. Are people aware of that? What kind of fines and penalties will be imposed if you don't comply with that? I could go on and on.

My point is, when I heard my colleague say, "We think the public supports this bill," maybe a lot of the public really haven't looked at what is in this bill. There are a couple of sections I will point out just for the information of our colleagues. I heard somebody say, "You can't be opposed to this bill now on attorney's fees," because we passed an amendment by one vote that had a limitation on attorney's fees. They can only make \$4,000 an hour for the old cases and, for future cases, \$500 an hour. Well, Mr. President, there is language in this bill that is an invitation for litigation that would not stop, that would be probably the most expensive litigation piece I have ever seen. There is a presumption. I will just read this part on page 233 of the bill. It is just a couple of paragraphs, but the paragraphs would cost consumers hundreds of billions of dollars.

General Causation Presumption. In any civil action to which this title applies involving a tobacco claim, there shall be evidentiary presumption that nicotine is addictive and that the diseases identified as being caused by use of tobacco products in the Centers for Disease Control and Prevention Reducing the Health Consequences of Smoking: 25 Years of Progress: A Report of the Surgeon General [back in 1989], The Health Consequences of Smoking: Involuntary Smoking [done in 1986]; and The Health Consequences of Using Smokeless Tobacco [Health Service in 1986], are caused in whole or in part by the use of tobacco products . . .

There is an evidentiary presumption that nicotine is addictive and diseases are identified as being caused by using tobacco products. In other words: Come sue. Come sue for anything. There are three books, and they touch on all kinds of diseases, including diabetes. It can have some little relationship to smoking, and we made a presumption that: tobacco is the fault; come sue. This is an invitation for litigation. Here you go, the trial lawyers will love this. They came out with a big one. They may have snuck it in, I don't know. This is a big invitation to sue. I heard Senator DOMENICI talking about this. I compliment him for raising it on the floor. Other people acted like they didn't know it is in the bill. It is still in the bill. So I make those comments.

I will make a couple of other comments. I see my friend from Kentucky here. I have already related the inequity of some of the taxation provisions in this bill dealing with either cigarettes or other tobacco products. We have currently pending an amendment by my colleague to strike out what some people have referred to as the Lugar provision, and I expect that

there will be an amendment pending to strike out the Ford provision. Both of them deal with compensation for tobacco farmers. I think both are too generous. One has a total cost, over 25 years, of \$28 billion; one has a cost of \$18 billion. Both would compensate tobacco farmers far in excess of the value of the land—value of the land that you could buy today on the open market, but we would pay several times the value. I think that is a mistake. I am troubled by that provision.

Mr. President, I don't know if this has been entered into the RECORD. I have a letter from the Governors urging opposition to this bill. These are the Governors whose attorneys general originally put together the package that said: Yes, we want to make a deal; we won't sue the tobacco companies if you will give us a couple hundred billion dollars over the next 25 years—about 8 billion a year. If you give us \$8 billion a year, collectively, then we will drop our class action suits. They have now looked at this bill and said: Don't pass it. It is not acceptable in its current form.

I happen to agree with the Governors—maybe for different reasons—but I don't think this bill is salvageable. I don't think we should pass it. Does that mean I am against doing something to reduce the teenage consumption and addiction of tobacco and drugs? Absolutely not. I want to do something. I have indicated that I am willing to pass a bill that would be directed, targeted, at reducing teenage consumption and addiction to tobacco. Do you have to spend hundreds of billions to do that, as we have in this legislation before us? The answer is no, absolutely not. As a matter of fact, I think what we are doing is funding an addiction of government to more government and doing very little on tobacco.

If we want to do some things to reduce teenage consumption and addiction to tobacco, let's do it. We have the HHS appropriation bill. We can put in more money for NIH, for cancer research, for money to have programs to discourage drug consumption, tobacco consumption. Let's do that, increase it, and cancel some other programs. We are spending now \$1.7 trillion per year. Let's move some of that around and put it into functions that would actually be targeted at our youth, to reduce their addiction and consumption of tobacco. I think that would be a giant step in the right direction.

I think passing this legislation is not really targeted to kids; it is targeted more to government. The President was absolutely wrong when he said those people who oppose this bill and think it is more government, that is a bunch of hoey. I think we did something. We read the bill. This bill is a bunch of hoey. This does not deserve to be passed.

I think this bill is a serious, serious mistake. If our colleagues on the other side of the aisle want to increase to-

bacco taxes, they can do so. This bill is, in my opinion, one of the worst pieces of legislation this Congress has considered in my legislative career. It should not pass. We should defeat this bill. We should defeat it either in the form of not agreeing to cloture—we have already had three cloture votes. We may well have one more. I hope my colleagues will not vote for cloture. I hope that a budget point of order, if that is made, will be sustained.

This bill is clearly outside the budget. It says so in its language. Do we agree with the budget that we passed last year, or are we just going to ignore it on this issue? We ignored it on the urgent supplemental. We violated the budget on those. There were some emergencies. There were some floods and other emergencies required funding and we have done that for before.

But to ignore the budget on these programs, all of which are in governmental entities, or creating governmental entities for new programs—for example, international tobacco control. That is \$350 million a year for the first 5 years, and such sums as necessary for the future years. That is a brand new program. I don't know that we need to fund it. But if we do, let's fund it under the budget. Why have it be outside the budget?

I look at a lot of these other programs. My colleagues were successful in saying, let's spend a couple billion dollars more in child care. We mandated that in this side of the equation. We have the tobacco community grants; opportunity grants. We have got a lot of new spending. I say that spending should be in the budget. It shouldn't be outside the budget.

So I urge my colleagues, let's defeat this bill. Let's come back to something that is responsible, something that is within the realm of the budget agreement.

Mr. President, I ask unanimous consent that a letter from of Governors' Association, as well as an article from the Washington Times on Monday, June 15 that says the tobacco bill is packed with programs and agencies be printed in the RECORD, as well as two charts that I referred to in my speech, one of which is the national tobacco settlement trust fund that shows the total cost of this bill could easily well reach \$997 billion. That is \$745 billion under the annual industry payments; maximum look-back. Maybe that would happen, part of it would happen; maybe not.

There are some who would say, "Wait a minute. You didn't take into consideration the volume adjustment." The bill said, if volume comes down below 20 percent, there will be some reduction in these industry payments. Maybe tobacco consumption would fall by more than 20 percent. Maybe it wouldn't. I don't know. It is hard to guess. There might be some reduction on that figure. I don't know. For cost analysis purposes, though, I note that the OMB did not figure volume adjust-

ments down within their original proposals. The attorneys general did not in their original proposal. Since it is impossible to do, I haven't done it in mine, either.

I make mention of that for the RECORD, and also ask to have included a chart that shows the disparity between products of companies.

I absolute don't think it is right for us to have different excise taxes on cigarette products because one company sells more than another company. That doesn't make sense to me. We have that throughout this bill. That needs to be remedied. If we stay on the bill, I will have an amendment to do.

So I ask unanimous consent that two charts, a letter, and newspaper articles be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL GOVERNORS ASSOCIATION,
Washington, DC, June 11, 1998.

Hon. TRENT LOTT,
Majority Leader,
U.S. Senate, Washington, DC.

Hon. THOMAS A. DASCHLE,
Minority Leader,
U.S. Senate, Washington, DC.

DEAR SENATORS LOTT AND DASCHLE: When the Senate began floor consideration of S. 1415, Senator McCain's tobacco settlement legislation, the bill included \$196.5 billion over twenty-five years for the states and territories to settle their lawsuits against the tobacco industry. Those state lawsuits made possible the development of comprehensive federal tobacco legislation.

Governors have made clear from the beginning of the Senate's legislative debate that preserving and protecting state settlement funds would be one of our highest priorities. We agreed to support the state financing section of the McCain-Lott manager's amendment, which included some restrictions on the use of half of the state funds, in exchange for a guarantee that the states would receive at least \$196.5 billion over twenty-five years. This funding level is consistent with the amount negotiated between the state attorneys general and the tobacco industry in the original June 20, 1997, agreement. At the same time, the amount of money available to the federal government through the tobacco bill has expanded significantly.

Over the past few days, the Senate adopted several amendments that dramatically reduce the amount of money available to the states to settle state lawsuits and restrict state flexibility related to the use of those funds that remain. Some Governors support the goals of the amendments that have been considered by the Senate, but federal priorities should be financed through the federal portion of the bill, rather than through state tobacco settlement funds.

The state funding pool has been reduced dramatically below the level to which Governors agreed. At such low levels, Governors must weight the potential of new state tobacco settlement revenues against the reality that a federal increase in the price per pack of cigarettes will result in an offsetting decrease in state cigarette excise tax revenues.

Accordingly, the nation's Governors are not able to support the state financing section of S. 1415 as amended. Given the experiences of the four states that have negotiated settlements of their individual lawsuits and the original state attorneys general agreement, the bill no longer places appropriate

priority on successfully settling state lawsuits. We urge you to restore the \$196.5 billion reserved for the states while the bill is still on the floor of the Senate.

In addition, the states must be free to continue to pursue their own lawsuits against the tobacco industry. We strongly urge the Senate to ensure that the language included in S. 1415, to clarify that state settlement funds are not subject to federal recoupment, is applied to all states, including those that choose not to participate in the federal settlement.

If we, the Executive Committee of the National Governors' Association, can provide you with clarification of our position, please do not hesitate to let us know.

Sincerely,

Gov. George V. Voinovich, State of Ohio; Gov. Roy Romer, State of Colorado; Gov. Bob Miller, State of Nevada; Gov. Michael O. Leavitt, State of Utah; Gov. Howard Dean, M.D., State of Vermont; Gov. Thomas R. Carper, State of Delaware; Gov. Lawton Chiles, State of Florida; Gov. David M. Beasley, State of South Carolina; Gov. Tommy G. Thompson, State of Wisconsin.

[From the Washington Times, June 15, 1998]

TOBACCO BILL IS PACKED WITH PROGRAMS, AGENCIES

(By Nancy E. Roman)

The tobacco bill moving through Congress would spend \$350 million per year for the first five years and as much "as may be necessary" for each year after that to promote smoking awareness abroad.

The foreign-aid program is one of many new government functions created in a tobacco bill that raises \$92 billion over five years by taxing cigarettes by \$1.10 per pack, and uses about \$65 billion of that over five years to pay for things ranging from child care to college tuition.

The bill would also create new Medicare pilot projects, ban smoking outside public entrances, create new causes for litigation and spend up to \$18,000 per American Indian to help them stop smoking.

Under the latest printed version of the tobacco bill, a whopping 480-page to me that few have read, the secretary of health and human services is directed to "promote efforts to share information and provide education internationally about the health, economic, social and other costs of tobacco use . . ."

Part of the \$350 million for each year through 2004 would be used to "support the development of appropriate governmental control activities in foreign countries."

The bill would also:

Ban smoking inside—and even outside—of public buildings involved in interstate commerce, including almost all retail facilities except restaurants. The bill prohibits smoking "within the immediate vicinity of the entrance to the facility." The only alter-

native is for facilities that set up a separate smoking section where the air is "directly exhausted to the outside."

Create a right to sue in federal court for individuals who believe that owners of buildings where they work or live violate this provision. Under the bill, individuals must notify the building owner of his or her intention to sue. After 60 days, if the owner has not corrected the situation, the individual may sue. Civil penalties of up to \$5,000 per day may be awarded under the bill. That would be a \$1.65 million fine for a one-year violation.

Provide up to \$1,700 per year in college tuition for tobacco farmers and their family members, including brothers, sisters, stepbrother's, stepsisters, sons-in-law, and daughters-in-law. There are currently two sections of the bill dealing with farmers, and one will have to be struck.

Provide as much as \$7.6 billion to help American Indians stop smoking, or about \$18,000 per American Indian smoker.

Under the bill, between 3 percent and 7 percent of the public health trust fund, or as much as \$7.6 billion, is set aside for smoking-cessation programs for American Indians, as defined by the Department of the Interior.

Under that definition, there are about 1.4 million American Indians, about 406,000 of whom are adult smokers who would qualify. Assuming 39.2 percent of them smoke (the average rate of smoking among American Indians), that would be about \$18,800 for each.

The original tobacco bill created about 17 new agencies, boards and commissions.

New functions for government include setting up a national tobacco document depository, creating tobacco smuggling prevention programs and countering advertising programs.

The bill would spend about \$13.6 million over five years to consider topics like the effects of smoke on pregnant women and further research on second-hand smoke.

A Senate aide who helped draft the bill said research has demonstrated that smoking damages fetuses and that secondhand smoke is dangerous, but it has not shown how it damages fetuses.

The bill would require states to license retailers that sell tobacco and bar those retailers from selling cigarettes to minors.

All 50 states have already out-lawed selling tobacco to minors. However, this bill requires them to conduct "monthly random, unannounced inspections of sales or distribution outlets in the state."

The states must then submit annual reports to the federal government detailing how it enforced the laws, the extent of the success achieved, how the inspections were conducted and the methods used to identify outlets.

One-quarter of the \$24.6 billion the state receive under the bill must be spent on child care programs, including those for school-age children.

The bill sets targets to reduce teen smoking—by 15 percent after four years, by 30 per-

cent after six years, by 50 percent after eight years and by 60 percent after 10 years.

Tobacco companies are charged a surcharge if those targets are not met and it is the government that determines whether those targets are met, based on "prevalence of tobacco products for the industry."

If the bill passes, the federal government will determine whether the targets have been met.

NATIONAL TOBACCO SETTLEMENT TRUST FUND

(Gross tax increase on consumers in billions of nominal dollars)

Year	Initial payment	Annual industry payments	Maximum potential lookback assessments	Grand total
1999	10.00	14.40	24.40	24.40
2000		15.40	15.40	15.40
2001		17.70	7.70	25.40
2002		21.40	7.92	29.32
2003		23.60	8.13	31.73
2004		24.31	8.35	32.66
2005		25.04	8.57	33.61
2006		25.79	8.81	34.59
2007		26.56	9.04	35.61
2008		27.36	9.29	36.65
2009		28.18	9.54	37.72
2010		29.03	9.80	38.82
2011		29.90	10.06	39.96
2012		30.79	10.33	41.12
2013		31.72	10.61	42.33
2014		32.67	10.90	43.57
2015		33.65	11.19	44.84
2016		34.66	11.49	46.15
2017		35.70	11.80	47.50
2018		36.77	12.12	48.89
2019		37.87	12.45	50.32
2020		39.01	12.79	51.79
2021		40.18	13.13	53.31
2022		41.38	13.49	54.87
2023		42.62	13.85	56.47
Total 25 years	10.00	745.67	241.36	997.02
Total 5 years ...	10.00	92.50	23.74	126.24
Total 10 years	10.00	221.55	67.80	299.36

Source: S. 1415 as modified on the Senate floor.

Annual industry payments are adjusted for the greater of 3% or CPI-U beginning in year 6. This estimate does not include potential increases or reductions in industry payments resulting from changes in the volume of tobacco sales.

Lookback assessments would be initiated after year 3 if underage tobacco use is not reduced by specified percentages. The maximum lookback assessment of \$4.4 billion is adjusted for inflation. Does not include an estimate for brand-specific lookback assessment.

TOBACCO PRODUCT ANALYSIS

Cigarette manufacturer	Cigarette brands	Share of U.S. market (in percent)	Cigarette tax increase under S. 1415 ¹
Philip Morris (USA)	Marlboro, Benson & Hedges, Merit, Virginia Slims, Parliament, Basic, Cambridge	49.1	\$1.10
R.J. Reynolds (USA)	Winston, Doral, Camel, Salem, Vantage Monarch, More, Now, Best Value, Sterling, Magna, Century	24.2	1.10
Brown & Williamson (US subsidiary of BAT Industries, UK)	Lucky Strike, Carlton, Kool	16.1	1.10
Lorillard (USA)	Newport, Kent, Old Gold, True	8.7	1.10
Liggett Group (USA)	L&M, Eve, Chesterfield, Lark	Less than 1	0.00

Smokeless manufacturer	Smokeless brands	Share of U.S. market (in percent)	Moist snuff tax increase under S. 1415 ²	Other smokeless tax increase under S. 1415 ²
U.S. Tobacco (USA)	Copenhagen, Skoal, WB Cut, and 13 other brands of moist & dry snuff	37.9	\$0.83	\$0.39
Conwood (USA)	Levi Garrett, Kodiak, Taylor's Pride, and 34 other brands of chewing tobacco and moist & dry snuff.	23.3	0.58	0.27
Pinkerton (subsidiary of Swedish Match, Sweden)	Red Man, Timber Wolf, and 19 other brands of chewing tobacco and moist snuff	22.0	0.58	0.27

Smokeless manufacturer	Smokeless brands	Share of U.S. market (in percent)	Moist snuff tax increase under S. 1415 ²	Other smokeless tax increase under S. 1415 ²
National Tobacco (USA)	Beech-Nut, Big Red, Havana Blossom, Trophy	9.2	0.58	0.27
Swisher (USA)	Mail Pouch, Silver Creek, and 33 other brands of chewing tobacco and moist & dry snuff.	6.8	0.58	0.27
Brown & Williamson (US subsidiary of BAT Industries UK)	Unknown	Less than 1	0.58	0.27
R.C. Owen (USA)	Unknown	Less than 1	0.58	0.27

¹ S. 1415 purports to impose a \$1.10 per pack cigarette tax by the year 2003. Subsection 402(f), page 186, exempts cigarettes produced by the Liggett Group as long as their cigarette production does not exceed 3% of the total U.S. production.

² Subsection 402(d)(3)(A) provides that a 1.2 ounce package of moist snuff is taxed at 75% of the level of a pack of cigarettes, and a 3 ounce package of other smokeless tobacco products is taxed at 35% of the level of a pack of cigarettes. Further, subsection 402(d)(3)(B) provides the smokeless tobacco products by smaller manufacturers (under 150 million units) are taxed at only 70% of the rate applied to other smokeless tobacco products.

CURRENT LAW TAX RATES: Cigarette = 24 cents per pack; Snuff = 2.7 cents per 1.2 ounce can; Other smokeless tobacco = 2.25 cents per 3 ounce package.

Mr. NICKLES. I yield the floor.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded, and I ask unanimous consent that I might speak for about 10 minutes, probably less, as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

PATIENTS' BILL OF RIGHTS

Mr. ROCKEFELLER. Mr. President, I have come to the Senate floor to talk about, as others have, something of fundamental importance to the people that I represent in my State of West Virginia, and that is equal treatment for all Americans with respect to health care. I am not just talking about Congressmen, and I am not just talking about coal miners or CEOs or custodians, I am talking about all Americans and all the time.

I want to talk about what I think is an urgent need here in Congress to pass legislation on the quality of health care, and that this legislation should apply to every single American. When enough of us recognize these needs, I am convinced we are going to enact legislation, and it is going to be called patient protection. It may have some other name. It may be modified, it may be expanded, who knows? But the need for it is undeniable, and it has to happen. Every single day that passes without the enactment of some kind of patient protection legislation is another day that millions of Americans, thousands of people I represent in West Virginia, are subject to the denial of needed treatments by insurance companies who are looking out for their bottom lines.

Every single day that we as a Congress fail to act on the Patients' Bill of Rights Act, if we want to call it that, is another day that Americans are left vulnerable to health care decisions made by people who are not doctors—in fact, doctors complain about this all the time—but who are, in fact, business professionals. Every day that we do not act, Americans are refused the specialty treatment they need and deserve. I am going to give two examples of this which I think are scary, and which are very real. Make no mistake, if we do not respond and if we do not

respond forcefully, more Americans are going to lose confidence in our health care system.

It is interesting to me, having observed health care now for quite a number of years, that it used to be it was only patients, or only consumers of health care who were worried about the cost of health care, the quality of health care, the paperwork of health care. Now, the people who really are coming on board in this angst are physicians themselves and nurses and people who work in hospitals who have to deal with the realities of what the health care system has become in this country.

West Virginia is no exception. West Virginia may have some more problems than some other States, but we are no exception with regard to the need for patient protection. I constantly run into West Virginians when I am at home who complain to me—not at my invitation, but at theirs—about being denied the treatment they felt they were promised, or that they knew they were promised from plans, health care plans where they thought their premiums entitled them to something called quality health care and fair treatment.

One complaint I hear all too often is being denied specialty care. That is a very big deal. General practitioners can take care of a lot of problems, but sometimes you come to a point where you have to have more. Under most managed care plans, a patient's primary care physician may in fact refer, as the gatekeeper or whatever, a patient to a specialist, if the primary care physician determines that specialty care is necessary. That makes a lot of sense to me. Primary care physicians are in a very good position to do that. That is a professional decision involving going to another professional. However, things may change if the specialist is not on the list often called the plan's network.

Let me explain. Suddenly, someone then comes from the administrative office, or from some other division, and may take over. Suddenly, the patient who, along with the primary care physician, is anxious for that patient to see a specialist because of some health problem, finds out that the executives, not the physician, but the executives in charge of the managed care plan, people who are not doctors, not medical providers, reserve the right to refuse payment for the specialist recommended by his or her original doc-

tor. In fact, this is a frequent occurrence for people who have insurance companies that push their employees to steer patients to only the physicians listed within their plan.

That is not the way it is meant to work. Insurance companies do not always make the best medical choices because they are not trained in that business. They are trained in a different business. Too often motivated by their bottom line, which is understandable, and not often enough motivated by the patient's health care needs, many specialty referrals are refused. Now, I go to my examples and I hope my colleagues will listen.

I think of a little 6-year-old boy from West Virginia who became seriously ill. Concerned, his mother rushed him to the doctor's office, his doctor's office, in fact, where he was quickly diagnosed with diabetes. His primary care physician referred him to an out-of-plan pediatric endocrinologist; a specialist in childhood diseases, that is. That was the referral, to a specialist in childhood diseases. The specialist placed this young child on insulin to control his condition. But when the child's primary care doctor referred him back to the specialist for a follow-up visit—which makes a lot of sense—the referral was denied, stating, “* * * service available with in-plan endocrinologist.”

That doesn't sound so bad, does it? In other words, go to the in-house, in-plan endocrinologist. So while it sounds like the child could get the care that was needed from the in-plan physician, the reality is that he could not get that health care for a very subtle but basic reason. The in-plan specialist was an adult endocrinologist, not a child endocrinologist, specializing in adult diabetes. But diabetes is not the same in children and adults, and there are different specialties for adults and for children in that field. The treatment is different. There is serious risks of developing future health problems when the childhood diabetes is not dealt with properly by a proper physician. The insurance company in this case was gambling, in effect risking this child's future health for the few dollars they saved by saying: Oh, you have to go to an in-plan doctor.

As bad as that case is—and I wish it were the only one, but it is not—I was recently told the story of a 14-day-old baby girl. Mr. President, 14 days old, this precious little child's health was already jeopardized by her health plan. What do I mean by that? This poor