for his efforts on this very important legislation. I also appreciate the cooperation of Senators on the other side of the aisle that worked through the day, including Senator KENNEDY, so that we could get to a conclusion on this important legislation. I think it is good for the country. It is the fourth of the high-tech bills that we worked on last week. I thought the combination of those four bills were important and will make a difference in our high-tech community and having the workers and the opportunity for workers to be able to do these important jobs in the high-tech sector. I congratulate Senator ABRAHAM for his work, and Senator MCCAIN, who came up with the suggestion that we try to do several of these high-tech bills in a row.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to S. 1415, which the clerk will report.

The assistant legislative 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 proceeded to consider the bill which had been reported from the Committee on Finance.

MODIFICATIONS TO COMMERCE COMMITTEE SUBSTITUTE

Mr. LOTT. Mr. President, on behalf of the chairman, the ranking member and a majority of the members of the Commerce Committee, I wish to modify the Commerce Committee substitute.

Before the Chair declares the amendment is modified, I announce to the Members that this is the text of the so-called managers' amendment that the chairman and ranking member have been working on for the last few days. The modification also incorporates the Finance Committee reported amendments as part of the new Commerce Committee substitute.

Mr. HOLLINGS. May I make an inquiry of the majority leader?

Mr. LOTT. We have a series of things we need to do in a row, if I could get through those.

The Chair needs to rule, I believe.

The PRESIDING OFFICER. The amendment is so modified.

Mr. LOTT. On behalf of the chairman and a majority of the members of the Commerce Committee, I wish to further modify the Commerce Committee substitute. Again, before the Chair declares that the amendment is further modified, I announce to the membership this modification would delete some of the Finance Committee amendments from the text of the Commerce Committee modification.

The PRESIDING OFFICER. The amendment is so modified.

Mr. LOTT. Finally, again on behalf of the chairman and a majority of the members of the Commerce Committee, I further modify the committee substitute. Again, before the Chair announces the modification, this last change would incorporate the Lugar Farmer's protection amendment as part of the Commerce Committee substitute.

The PRESIDING OFFICER. The amendment is so modified.

Mr. LOTT. For the information of all Senators, as a result of this action, the pending Commerce Committee Substitute contains the following: The so-called managers' amendment; all of the Finance Committee reported amendments, except the $1.50 increase; Title 14, with respect to declaring the price increase a tax increase; the three deletions with respect to the LEAF Act; the lookback and the compliance fund and tobacco tax trust fund; and the Lugar-Farmer's protection amendment.

Finally, I ask unanimous consent that the modified committee substitute be printed as a Senate amendment and the final version incorporating all of the modifications only be printed in the RECORD.

Mr. HOLLINGS. I object.

Mr. LOTT. At this point, Mr. President, I ask the Senate if they would allow me to go through this.

Mr. HOLLINGS. I do object.

Mr. LOTT. I wanted to give you a chance to inquire, but by objecting you certainly can inquire.

Mr. HOLLINGS. I do object. Mr. President, this has been a long, hard road, as you well know. Almost a year ago the White House, health community and the States, and the States' attorneys general all met and everyone was provided for except the person who really depended on his living—that is, the tobacco farmer. So I got together during the fall with the distinguished Senator from Kentucky, Senator FORD, and he and I worked diligently over the fall period developing what we call the LEAF Act, which not only took care of the farmer but the farm community; namely, the warehousemen, the bank that is financing, the equipment dealer, and everything else of that kind.

There is no question that if this so-called tobacco bill works, there can't be any tobacco farmer unless they are tobacco companies. This is going to diminish the tobacco companies to a great extent and limit the tobacco farmers, as they go down or out of business. We have included the LEAF Act as sort of a safety net. Now, we met in the Commerce Committee on that basis. I know the distinguished chairman, Senator MCCAIN, came to me, and on the basis of him going along with the LEAF Act, we made it a bipartisan bill and voted it out 19–1.

The distinguished chairman also went to South Carolina before thousands of farmers and represented: Don't worry about the LEAF Act. Mr. President, I have been in five conferences now—two actually in my own hideaway in the Capitol—with the White House, the majority leadership, Senator MCCAIN, and others, on this pack of bills. It included Senators on both sides of the aisle, with staffs and everything else. In the five meetings, including the one at 4 o'clock this afternoon, I was always counseled: Don't worry, the LEAF Act is intact.

Don't give me the double talk that it is still intact, not when you put in the Lugar bill by a majority vote. The Lugar bill, by a majority vote, puts that farmer out of business. That is the one thing that the distinguished Senator from Kentucky, and others, have worked and counseled against, and everything else of that kind.

I question, respectfully, that the majority leader identified the majority of the Commerce Committee members. That is all your Republicans; is that what you say?

Mr. LOTT. Yes, it is.

Mr. HOLLINGS. I am dismayed. About a half-hour ago, I had a chance to talk, of course, just a bit with the majority leader. Until now, nothing has been said, and this kind of conduct and course of conduct is just the worst I have seen in my 30-some years up here. There is nothing you can do if they want to change their votes. They all voted for the bill, and I know how they felt because I talked to various Members. I have been talking to them intermittently over the past several months, and over the past 1 month in conferences with the White House. And now, to come at the last minute and have the ground cut from under you with this particular request on the premise that you want to be fair and give everybody a fair vote, that isn't what I worked for. I worked to give this a particular priority that no one else has given it—and certainly not to tobacco companies. I think the tobacco companies have the pressure on at this point to go along with the Lugar amendment and save them billions of dollars. That could be the case.

I yield to my distinguished friend from Kentucky.

Mr. FORD. Mr. President, reserving the right to object, I say this with all respect to the majority leader and to my colleague. It is very difficult to understand what has developed. I thought I understood the rules very well and worked diligently, along with the distinguished Senator from South Carolina, and others, including Senator FRIST, who worked hard to work out the FDA amendment that is in the bill; all of us worked hard to put this together.

I understand the 60-vote rule. I understand that very well, because this amendment by Senator LUGAR cannot raise the money. They talked about a lump sum payment and had to change it today because it is 3 years or more. There is no lump sum payment here. You are fooling the farmers, misrepresenting things to the farmer, if the Lugar amendment gets in here. It is

the farmer versus the manufacturer. The manufacturer, under the Lugar amendment, will save a billion dollars a year, minimum—a billion dollars a year. You are going to see that check signed tomorrow. You are going to see the press conference tomorrow. You are going to see the farmers come in here tomorrow, because they are opposed to Lugar. You can have all the misgivings you want. There could be ghosts behind every tombstone about the future, but you have to lay groundwork.

I say to the majority leader, with all respect, if this is done to us, I am going to make it as difficult as I can to see that the bill is not passed this week, and probably not in June. I believe my responsibility here is to the farmer, not to the manufacturer and not to misrepresent that 40 percent of all the money raised by the McCain bill will go to the farmers under 3 years.

Think about that 40 percent. What are you going to reduce? Research? What are you going to reduce? Advertising? What are you going to reduce in order to get that money? Sure, you have to raise it $1.50 to pay for Lugar, and you may not be able to do it then. So here we are, saying to those of us who have worked for months—and I have been on the front porches of grocery stores, in kitchens of farmers, I have been in six States talking to farmers, and this is what the farmers wrote—the LEAF Act. They didn't write the Lugar amendment.

I am sorry that the chairman of the Agriculture Committee is not going to have a vote. I feel sorry for him, but this is the nature of this institution. This is the nature, this is the rule, and this is the precedent. You are following the rules, that is true. But when it comes down to the farmer versus the manufacturer—and this Lugar amendment will give billions to the manufacturer—then I think that the Senate will have a question of whether they want to support the farmer or whether they want to support the tobacco manufacturer.

I know there is nothing I can do, Mr. President. I can object to the unanimous consent, but eventually we will vote on it. Everybody is working hard on the other side to get a bill out of here—just get it out of here. We don't want to touch it, we don't want to fool with it anymore, because what comes out of conference is going to be a minuscule bill. You will have a hard time getting that bill through this body. So rather than starting to take the hide off of folks in the beginning before you even bring the bill up, it seems to me it is a little bit disconcerting.

The chairman of the Commerce Committee has been as straight with me and with us as he could be. I find no fault with what he has attempted to do, because some things we can't agree on. But we were not disagreeable. Everything has always been on top of the table with us, and his word has been as good as gold; his word has been his bond. And now the majority leader takes over all this hard work he has done and say to the chairman of the committee, and to us who worked to cooperate, that what you did and your cooperation is for naught.

I yield the floor.

The PRESIDING OFFICER. Is there objection to the unanimous consent request of the majority leader?

Mr. HOLLINGS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. Mr. President, there is objection. Before I renew the request that I made, which was merely that this substitute be printed as a Senate amendment and the final version only be printed in the RECORD, I want to note that all this means is that we would have to print all three of these documents, which are all pretty substantial in size. We can do that, but there is a cost involved and there is time involved. I hoped that there would not be objection to having this document printed. It would be available to the Members to review. But if there is objection to that, it won't stop anything. We will go forward.

Let me respond to a lot that has been said because I thought it was important that the former chairman of the Commerce Committee, the Senator from South Carolina who worked with Senator MCCAIN, be heard, and I thought it was very important that the Senator from Kentucky make his case. But let me also explain what is going on here.

Everybody knows this has not been easy to get through the committee process to get at this point on the floor of the Senate with a lot of give and take and a lot of Senators who had to take positions that were hard for them, including the Senator from Arizona, Senator MCCAIN. And other Senators who are going to be involved in this have had to accept some things they didn't go along with. I acknowledge that the Senator from South Carolina has worked very carefully with the Senator from Arizona. But also it is my job as majority leader to try to find a responsible way to move this forward to get it to the floor in the fairest possible way. There is no way to do that without some people feeling like, ''Well it is not exactly the way I wanted it,'' or ''It doesn't give me a fair position,'' or ''It doesn't give me more than a fair position. All I want is an advantage.''

Now the Senator from Indiana is chairman of the Agriculture Committee. It seems rational to me that you would understand that as majority leader I would be interested and concerned in the position, or an amendment to be offered on this important piece of legislation by the chairman of the Agriculture Committee, and, if we didn't do it this way, he would be disadvantaged in that he would have to have 60 votes, not 51—not a majority, a supermajority of 60 votes. I understand that the Senator from Kentucky wanted to require that, and he has used his influence to get it in the position where that could have occurred. He also understands that what I am doing here is perfectly within the rules. I am trying to get everybody on a fair and equal footing. I don't know how the votes are going to go.

Mr. FORD. Will the majority leader yield?

Mr. LOTT. If I could, because I didn't interrupt the Senator from Kentucky.

I don't know how the voting is going to go. Senator LUGAR might get 51 votes. Senator FORD might win and prevail because 51 votes cannot be achieved for the Lugar amendment. There are a lot of people who don't think either one of these are all that hot. Quite frankly, they would like a whole different arrangement to be of assistance legitimately to the tobacco farmers. These are not the only two solutions in the world. There might be some other ones.

I do not want to disadvantage anybody. But this is an amendment that has been around on this subject for quite some time. Senator LUGAR has never made it a secret of the fact that he would want this to be offered, or as an alternative available to him to be offered. There are others who do not like this provision or that provision that is included or not included. But, in other instances, the Senators would have to offer an amendment only to get 50 votes.

So I think this is a fair way to go. I am sorry the Senator doesn't agree with it. But I have been very meticulous to make sure that everybody was aware of what we were trying to do here. I have not been in all of these substantive negotiations. I have been strictly looking at how we can move this forward and what the process is to have it come up and considered in a fair way.

The chairman of the Finance Committee is standing here now wanting to ask some questions of the Chair about what this means for the Finance Committee and what they did. They had a tough time. They came up with some improvements. They came up with some things certainly I don't agree with, and I don't think the chairman does, either. But he is willing to get a clarification of what it means for him, and to go forward. I think he has taken the right position.

So I just wanted to take this opportunity to say that I understand where everybody is coming from but that I think this is the fair way to do it.

I don't think we ought to start over by saying, ''Well, if we don't get this, or don't get that, we are going to kill it.'' I don't think anybody wants that to happen on your side of the aisle. Let's go forward. Let's have some amendments. And let's see where the votes are. That is the way to do this.

Mr. FORD. Mr. President, continuing to reserve the right to object.

Mr. LOTT. I believe there is no reservation.

The PRESIDING OFFICER. An objection was heard, and the majority leader is recognized.

Mr. LOTT. Let me do this, Mr. President, so that the Senator can respond. I yield to the Senator from Kentucky so he can respond.

Mr. FORD. I say to the majority leader that I understand that Senator LUGAR is chairman of the Agriculture Committee. I understand that Senator LUGAR has been around here more than a week or two. I understand that Senator LUGAR should understand the rules. And I understand that he has been working diligently, along with others, to make this work. I have been doing the same. And then when I get it to a point where you have it where you think you are safe and that you are protected, then in order to be fair about it, in order to be fair about it, you change everything we have done for the last 10 months, except that I get a vote up and down. But I had the position—or we had it in a position where it would take 60.

So I think that the fairness now in all of the work that you do that is not fair, and so, therefore, the work you do is out the window because it is not fair. I thought when you made it through here, and you got it through the committee, and you got it on the floor, that was pretty fair after 10 months. Now because another Senator doesn't have an opportunity to bring it up——

Mr. LOTT. The only time there would be a guarantee of that is when it has gone through the Senate, the House, then a conference, and the President puts pen to paper.

Mr. FORD. I understand you are talking about fairness here and you are being unfair to those of us who worked so hard.

Mr. LOTT. Mr. President, I renew my request with respect to the subcommittee substitute.

Mr. KERRY. Reserving the right to object.

Mr. HOLLINGS. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized under the reservation.

Mr. KERRY. Mr. President, nobody needs to speak for either the Senator from Kentucky or the Senator from South Carolina. They have done it for many years here, and they are as capable as anybody. But I would like to say that I understand the difficulties in which the majority leader finds himself. He gets approached by people on both sides, from all sides, and it is difficult to bring this piece to the floor. But there is a process by which we have been working and by which, I think, most of us understood that we were sort of teeing this legislation up for the floor. I think it has been an exceptional process. I applaud the Senator from Arizona, the chairman of the Commerce Committee, for the way in which he has tried to meld those forces over the course of the last months.

The truth is that the Senator from Kentucky and the Senator from South Carolina, who is the ranking member and who could have stood in the way, significantly along the way here, of progress, has moved along the way to get us to where we are with an understanding of where he stood with respect to critical issues. Everybody here understands how you approach any of these negotiations. There is a certain amount that you are willing to give up with an understanding of what you are getting and that you are where you are.

Through all of these meetings, through all of the interventions to this point in time, neither the Senator from South Carolina nor I have been part of those meetings, nor any of my colleagues have had any knowledge whatsoever that this ''rule'' might be invoked. They have had no opportunity to think about an alternative process to work with their colleagues, or otherwise.

I simply say that suddenly at 4 o'clock in the afternoon the entire ground has shifted. That is within the rules. The Senator from Kentucky has acknowledged that. I acknowledge that. That may be one of the very difficult decisions that the majority leader has to make.

But if fairness is what we are really looking for here, it seems to me that maybe there is a way to find some alternative method of including the Senator from Kentucky and the Senator from South Carolina and the chairman of the Agriculture Committee to find out how you might resolve this other than to do it in this sort of fairly unilateral fashion. I don't know if that is possible. But I would certainly say that in the context of the way in which the negotiations have been conducted to reach this point that also strikes me as being fair.

Mr. LOTT. Mr. President, will the Senator yield?

Mr. KERRY. I am happy to yield.

Mr. LOTT. The Senator from Massachusetts is speaking under reservation.

Let me assure him that I have looked at all of the alternatives. I have looked at the best possible way to bring this up. I didn't know it was going to wind up having to be done this way. We didn't know 2 weeks ago that we would have the Finance Committee angles. I have said all along that Senator LUGAR, chairman of the Agriculture Committee, was going to have a fair shot, along with anybody else, to offer his amendment and win or lose by majority vote. I am surprised that some people are surprised by this. But I understand. But I just say that I have been having people on this side of the aisle complain about this, too. There are a lot of people on my side of the aisle who do not want this brought up under this concept, or any other.

But I will say this to Senators on both sides of the aisle: Anybody who wants to stand in the way of this bill, if you don't want us to try to find a way to deal with children's porn, and drug abuse by children, if you don't want us to find a way to try to deal with the health problems caused by tobacco—all I am trying to do is get a 51-vote majority for an amendment—go right ahead. There are people on both sides of the aisle threatening to do just that.

Now, I know the Senator from Massachusetts is trying to contribute by saying let's keep calm and can we find a way to work this out. I think this is a fair way, and I admonish everybody to stay calm, too, and keep our eye on what is the target here. It is bigger than the sum of its parts, and we ought to keep that in mind. We may not be able to do it this week. We may never be able to do it. The odds are very strong that this thing is going to implode by the weight we are placing on it. Every time we tested it, it has gotten bigger, fatter and more difficult to get through. So it is OK with me however it works out. But I believe we have here a reasonable way to begin this process, and I urge my colleagues, hold your fire. Let's go ahead with the opening statements by the Senators. Let's get some amendments going. Who knows for sure how it is going to work out?

Mr. MCCAIN. Will the Senator yield?

Mr. KERRY. I would be happy to yield after I finish my comment.

I will not object, Mr. President. But I would simply say that I think the Senator from Arizona would agree that in the judgment of most of us we thought we made it smaller and slimmer and easier, but that will be proven over the course of the next days. I appreciate what the majority leader has said, and I think hopefully we can find some way to resolve this as we go through the next days.

Mr. MCCAIN. Will the Senator yield?

Mr. KERRY. I will yield the floor.

The PRESIDING OFFICER. Is there objection to the majority leader's——

Mr. MCCAIN addressed the Chair.

Mr. HOLLINGS. Reserving the right to object.

Mr. KERRY. I yield to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Massachusetts has not had the floor—

Mr. MCCAIN. Reserving the right to object.

The PRESIDING OFFICER. And thereby does not have the authority to yield. The majority leader has the floor.

Mr. MCCAIN. Will the majority leader yield to me for a brief comment? The majority leader has the floor.

Mr. LOTT. Mr. President, I had a request pending, but if I have the time——

The PRESIDING OFFICER. Is there an objection?

Mr. MCCAIN. Reserving the right to object.

Mr. HOLLINGS. Reserving the right to object.

The PRESIDING OFFICER. The Senator is recognized.

Mr. MCCAIN. This is a difficult situation and not the first that we have been through in this process, nor regrettably, I feel, will it be the last. I

have great sympathy for my two dear friends—one from Kentucky, one from South Carolina—who fought very hard for the people they represent. I also understand, and I think we all should, the position of the majority leader, who, despite the predictions of many, has been steadfast throughout as far as saying this bill would come to the floor and we would resolve it, if there was anything within his power to do it.

It was my understanding I would be managing this bill with the distinguished Senator from South Carolina. I will make every effort to make sure that fairness is the order of the day, which has been the way we have conducted our relationship and our negotiations throughout this bill. I will do everything in my power.

I understand very well how concerned the Senators from South Carolina and Kentucky are. I also understand that the majority leader has the right to do these things. We saw them when the other side of the aisle was in the majority. I saw it on several bills where modifications were put into bills which made it no longer a 60-vote proposition but 51–49. I didn't like that at the time. But it is perfectly correct in the parliamentary fashion.

I would, again, like to echo the words of the majority leader. We are going to hear attacks. There are people waiting right now to attack this bill in the most vociferous and passionate fashion, and there are people on the other side who will say: You guys aren't tough enough on these tobacco companies; you have got to do more. The first amendment is going to smack them for a buck 50 instead of a buck ten. We will hear over here: This is the biggest tax increase in history; you are doing way too much.

But I believe the great center will hold on this bill, and I believe that a fair procedure will follow. And I want to commit to my colleagues that will happen. I am sorry, I say to my friends from South Carolina and from Kentucky, this has been distressing to them, but I hope we can move forward in a fair and equitable fashion.

The PRESIDING OFFICER. Is there objection to the majority leader's——

Mr. HOLLINGS. Reserving the right to object.

Mr. DASCHLE. Reserving the right to object.

The PRESIDING OFFICER. The distinguished Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I have not wanted to get into this until now, but I must say I applaud what the distinguished chairman has said in a couple of aspects. First of all, I think that it is true; up until now, there has been a good deal of effort on both sides to bring this bill to the floor. We wouldn't be here today were it not for the leadership of the Senator from Arizona and the tremendous work put forth by the Senator from South Carolina, as well as the Senator from Kentucky. It is the only way we got to this point. We got here because the ranking member and the chairman concluded that this bill needed to get to the floor, and we were under a timeframe within which to do that.

That has now happened. It was only through that effort that we were able to get this far. And I think it is fair to say both sides have been working in good faith to bring us to this point.

So there is really two questions here. No. 1, is it within the right of the majority leader to amend his legislation as he has proposed to do? And clearly he is within his rights to do that. The real question is, Is it in keeping with what we have established as the working order here? Are we in the same kind of partnership that we thought we had all the way through this process as we moved procedurally to the floor?

The answer clearly is no; this was a surprise. Senator HOLLINGS has been in the meetings discussing what would go in the managers' amendment until at least 4 o'clock this afternoon. Senator HOLLINGS, the administration and others have signed off on every single piece of what was to go into the managers' amendment.

I just left the floor to check with the administration to see if they knew that this was in the managers' amendment, and the answer was emphatically no. No one told them this was going to be included. No one gave them any indication.

So clearly we start this debate with a very serious misunderstanding and a very serious violation of good faith. It is within the right of the majority to take steps of this kind, but, unfortunately, it comes at a price. That price is the cooperation needed to complete our work. The price is coming to terms with all the other procedural questions we have to face.

How is it possible to get unanimous consent under these circumstances? How is it possible to get any understanding about the degree to which we can agree on amendments with this problem?

So, Mr. President, we have compounded the problem this afternoon, unnecessarily it seems to me. The majority leader has a job to do. He has to make choices, and I understand that. But I hope as those choices are made, we clearly demonstrate the appreciation for the kind of communication that is going to be absolutely essential if we get anything done at all. I hope we can work through this. I hope before the night is out, or at the very latest tomorrow morning, we can resolve this matter, because if we are going to move forward adequately, successfully, it has to be resolved. I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER (Mr. FRIST). Is there objection?

Mr. HOLLINGS. Reserving the right to object.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished Chair.

Mr. President, there is not any question about the majority leader's right to proceed as he does and make that request. But he only does that with the majority vote of the Commerce Committee. That is the dismaying thing to this particular Senator, because when you meet as the ranking member, you represent not only yourself but the committee members and other Senators interested, of course, in the tobacco farmer. And you are not just wanting to assure yourself. You are wanting to assure others you represent because they are constantly asking these questions. So everyone, the White House, the health community, everyone now has gotten in step as of 4 o'clock on the LEAF Act, and to come now with this procedure and say they have the majority, which would include the distinguished chairman of the committee, is a shocking surprise to me. I can tell you that right now because I have been with him. I got with him only on this understanding. And to come now and put the LEAF Act in jeopardy with this particular procedure, I just had to stand up here and register my objection.

Now, I don't want to object in a silly fashion to the printing, so I will withhold it, but the bipartisanship is ended.

Mr. ROTH. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. Without objection, the majority leader's request is agreed to.

(The committee substitute, as modified to incorporate the text of amendment No. 2420, will be printed in a future edition of the RECORD.)

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I rise to make a parliamentary inquiry on behalf of my distinguished ranking member, Senator MOYNIHAN, and myself, as chairman of the Finance Committee.

The Senate has before it a modification to the Commerce Committee substitute and Finance Committee amendment to S. 1415, the National Tobacco Policy and Youth Smoking Reduction Act. If the modification were introduced as a bill, would it be referred to the Finance Committee?

The PRESIDING OFFICER. Yes, it will.

Mr. ROTH. Mr. President, further parliamentary inquiry——

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. Yes, it would.

Mr. ROTH. The modification contains settlement payments and health fees. Is it true that these provisions, no matter how they are designated, are revenue measures, and, thus, within the jurisdiction of the Finance Committee?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROTH. Mr. President, Senator MOYNIHAN and myself would like to note for the record that the modification of the Commerce Committee substitute violates Rule 15 of the Standing

Rules of the Senate. Neither Senator MOYNIHAN nor I will raise the point of order because, even if we did raise the point of order, the leaders or managers could accomplish the same result by offering the identical text as a floor amendment.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD. This material is the technical explanation that describes the amendments made by the Committee on Finance to S. 1415, as reported by the Committee on Commerce, Science, and Transportation.

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

TECHNICAL EXPLANATION OF FINANCE COMMITTEE AMENDMENT TO S. 1415 (AS APPROVED ON MAY 14, 1998)

I. TOBACCO EXCISE TAX AND TRUST FUND PROVISIONS

A. PRESENT-LAW TAX AND TRUST FUND PROVISIONS

Excise taxes on tobacco products. Excise taxes imposed on cigarettes, cigars, chewing tobacco and snuff, pipe tobacco, and cigarette papers and tubes (Code sec. 5701). In addition, tax will be extended to ''roll-your-own tobacco'' at the same rates as pipe tobacco, effective on January 1, 2000. These taxes are imposed upon removal of the taxable tobacco products by the manufacturer, or on importation into the United States.[1] The current tax rates are shown in the table below:

Tobacco product	Tax rate
Cigarettes:	
Small cigarettes[2]	$12.00 per thousand (24 cents per pack of 20 cigarettes).
Large cigarettes	$25.20 per thousand.
Cigars:	
Small cigars	$1.125 per thousand.
Large cigars	12.75% of manufacturer's price, up to $30 per thousand.
Chewing tobacco	$0.12 per pound.
Snuff	$0.36 per pound.
Pipe tobacco	$0.675 per pound.
Cigarette papers	$0.0075 per 50 papers.
Cigarette tubes	$0.15 per 50 tubes.

Effective on January 1, 2000, the tax rate on small cigarettes is scheduled to increase by $5 per thousand (to 34 cents per pack of 20 small cigarettes), and the tax rates on other taxable tobacco products are scheduled to increase by proportionate amounts. Effective on January 1, 2002, a further increase of $2.50 per thousand (to 39 cents per pack of 20 small cigarettes) is scheduled to become effective. (Tax rates on other taxable tobacco products will increase proportionately on that date as well.)

Generally, excise taxes on tobacco products that are removed during any semimonthly period must be paid by the 14th day after the last day of such semimonthly period. Late payment of tobacco excise taxes is subject to interest charges and penalties in the same manner as the late payment of other types of taxes. In addition, a failure to pay penalty equal to 5 percent of the tax due, but unpaid, is assessed under section 5761(b).

Revenues from the current tobacco products excise taxes are deposited in the General Fund of the Treasury.

Tobacco occupational excise tax. An annual excise tax of $1,000 per premise generally is imposed on manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors (Code sec. 5731). The occupational tax is $500 per premise for taxpayers with annual gross receipts less than $500,000. Revenues from the occupational tax are deposited in the General Fund of the Treasury.

Penaly excise taxes. In addition to excise taxes imposed primarily to raise revenue, the Internal Revenue Code (the ''Code'') includes several excise taxes imposed as ''penalties'' for taking (or failing to take) certain required actions. Examples of these excise taxes include taxes on excess lobbying expenditures by charitable organizations, certain ''self-dealing'' activities by officers and others involved with private foundations, failures by private foundations to distribute required percentages of income, and numerous regulatory excise taxes imposed with respect to specified activities of qualified pension plans. Present law does not establish any underage smoking reduction goals or impose any penalty excise tax with respect to such goals.

Overview of Internal Revenue Code Trust Funds. Most Trust Funds that are financed with dedicated excise tax revenues are established in the Code (secs 9501 et. seq.). Examples of these Trust Funds are the Airport and Airway Trust Fund, the Highway Trust Fund, the Black Lung Trust Fund, the Aquatic Resources Trust Fund, the Inland Waterways Trust Fund, the Hazardous Substance Superfund, the Leaking Underground Storage Tank Trust Fund and the Oil Spill Liability Trust Fund. Each of these Trust Funds includes provisions dedicating specified revenues to the Trust Fund and provisions approving expenditure purposes of the Trust Fund (generally as those purposes are in effect on the date of enactment of specific authorizing legislation). The Code also contains general provisions relating to the management of these Trust Funds. In general, Trust Fund expenditures are subject to the annual appropriations process. Under present law, there is no Federal trust fund relating to tobacco taxes and spending programs.

B. DESCRIPTION OF FINANCE COMMITTEE AMENDMENT RELATING TO TOBACCO TAXES AND TRUST FUND

Increase in tobacco products excise tax rates. In lieu of the payments (including the initial $10 billion payment) required of tobacco manufacturers under S. 1415, as reported by the Committee on Commerce, Science, and Transportation (the ''Commerce Committee''), the current Federal excise tax rate on small cigarettes is increased by $1.50 per pack of 20 small cigarettes. The tax rates on all other taxable tobacco products are increased proportionately to the increases specified for small cigarettes. In addition, the effective date for imposition of tax on ''roll-your-own'' tobacco is accelerated from January 1, 2000, to January 1, 1999. Each of these rate increases will be phased-in ratably over a three-year period (calender years 1999, 2000, and 2001). Thus, for example, the tax rate on small cigarettes will increase by 50 cents per pack of 20 cigarettes on January 1, 1999, by an additional 50 cents per pack on January 1, 2000, and by an additional 50 cents per pack on January 1, 2001. (These increases are in addition to the rate increases currently scheduled to take effect in 2001 and 2003.)

On each January 1 beginning in calendar year 2002, all tobacco excise tax rates will be adjusted for inflation, as measured by changes in the CPI occurring during the 12-month period ending on the preceding August 31.

Floor stocks taxes comparable to those imposed when tobacco excise tax rates previously have been increased will be imposed on each tax increase date. Floor stocks taxes must be paid no later than July 1 of the year of tax increase.

As stated above in the description of present law, the current tobacco products excise taxes apply to tobacco products manufactured in, or imported into, the United States. Solely for purposes of these increased tax amounts, the term United States includes U.S. possessions as well as the 50 States and the District of Columbia. Accordingly, no amount of the increase will be covered-over to U.S. possessions under Code section 7652.

Further, the effective date of certain compliance provisions relating to exported cigarettes is accelerated from January 1, 2000, to January 1, 1999.

Impose penalty excise tax for failure to meet underage smoking reducing goals. Both the National Tobacco Proposed Resolution (the ''Proposed Resolution'') and S. 1415, as reported by the Commerce Committee, would establish goals for the reduction of underage smoking and would impose lookback ''surcharges'' or ''assessments'' on tobacco manufacturers if these goals are not met. In lieu of the lookback surcharges or assessments, the Finance Committee amendment imposes a non-deductible penalty excise tax on all manufacturers and importers of cigarettes and smokeless tobacco.

All manufacturers and importers of cigarettes and smokeless tobacco are subject to the penalty excise tax. Imposition of this penalty excise tax is governed by the smoking reduction goals and imposed at the rates specified in S. 1415, as reported by the Commerce Committee. In addition, the Finance Committee amendment provides that the determination of whether underage smoking goals are met is determined under rules prescribed by the Secretary of the Treasury (in consultation with the Public Health Service). Beginning in that year, the Secretary of the Treasury is directed to publish by February 15 of each calendar year the amount of tax allocated to each cigarette and smokeless tobacco manufacturer and importer based on their prior year's excise tax liability.

The penalty excise tax is payable in full no later than April 1 of each calendar year. Cigarette manufacturers and importers are jointly and severally liable for payment of this tax imposed with respect to cigarettes as provided in the Proposed Resolution and S. 1415, as reported by the Commerce Committee. Smokeless tobacco manufacturers and importers similarly are jointly and severally liable for payment of tax attributable to smokeless tobacco. Other Code administrative and enforcement provisions applicable to excise taxes generally apply to this tax.

Deletion of Federal requirements relating to ''pass through'' of payments. The provisions in S. 1415, as reported by the Commerce Committee, requiring that tobacco manufacturers use their best efforts to pass through to consumers the amount of any payments on a per unit basis are deleted.

Deletion or modification of miscellaneous ''fees'' contained in S. 1415. The provisions of S. 1415, as reported by the Commerce Committee, that impose separate ''fees'' to support the Tobacco Community Revitalization Trust Fund programs, the ''fees'' and operative Trust Fund provisions related to international tobacco control, the ''fees'' and ''assessments'' on nonparticipating manufacturers, the Tobacco Asbestos Trust Fund and related programmatic provisions, the Compliance Bonus Fund, and the provision relating to child care and early childhood development spending are deleted from the bill.

The Finance Committee amendment provides that, notwithstanding any other provision of law, all charges or user fees imposed under the titles of the bill other than the revenue title must be set in amounts that recover only costs attributable to providing services to the party paying the fees (i.e.,

[1] Footnotes appear at end of article.

must be true, or cost-based, user fees rather than disguised taxes).

Establishment of National Tobacco Settlement Trust Fund. In lieu of the multiple separate Trust Funds provided for under the Commerce Committee titles of S. 1415, as reported, a National Tobacco Settlement Trust Fund (the ''Tobacco Trust Fund'') is established in the Treasury Department pursuant to provisions enacted into the Trust Fund provisions of the Code. Amounts equal to the net revenues[4] from the changes made by the Finance Committee amendment are to be deposited in the Tobacco Trust Fund.[5] The Tobacco Trust Fund further will receive amounts equal to all penalties imposed under S. 1415.

Amounts in the Tobacco Trust Fund generally are available for expenditure as provided in subsequently enacted appropriations Acts.[6]

Amounts in the Tobacco Trust Fund are available for expenditure for the programs provided in S. 1415, as those programs are in effect on the date of the bill's enactment.

The Tobacco Trust Fund includes a separate account, the State Tobacco Settlement Account (the ''State Account''), to administer distribution of Trust Fund monies to States. The State Account will receive revenues equal to 30 percent of the net revenues produced by the increases in tobacco taxes during the five calendar years, 1999 through 2003. In calendar year 2004 and thereafter, this percentage will increase to 45 percent. These revenues are not available to finance any other Trust Fund expenditure purposes. States are eligible for payments from the State Account and the Tobacco Trust Fund generally only if they waive their rights to any future payments under State settlements with the tobacco manufacturers or importers.

Each State is eligible to receive the portion of the monies in the State Account shown in the table entitled ''Distribution of Funds to States'' below, except the States of Mississippi, Florida, Texas, and Minnesota are guaranteed that amounts those States receive will not be less than the amounts they would have received under their previously negotiated settlements with the tobacco companies, determined on a year-by-year basis.

In general, there are no requirements or restrictions on the use of funds appropriated to the States from the Tobacco Trust Fund; however, the Finance Committee amendment clarifies that the Medicaid cost recovery provisions apply to States that use Tobacco Trust Fund payments in their Medicaid programs. Cost recovery is waived for States that use the Tobacco Trust Fund for other purposes.

Provisions further are included ensuring that no tax revenues are deposited into the Tobacco Trust Fund if any monies are spent other than as authorized under these provisions.

General administrative provisions applicable to Code Trust Funds apply to the Tobacco Trust Fund, except no interest would accrue on unspent balances in the Tobacco Trust Fund. As with other Code Trust Funds, the Tobacco Trust Fund is not permitted to borrow from the General Fund.

DISTRIBUTION OF FUNDS TO STATES

State	Percentage
Alabama	1.237
Alaska	0.400
Arizona	1.709
Arkansas	0.954
California	8.695
Colorado	0.990
Connecticut	1.548
Delaware	0.400
D.C.	0.474

DISTRIBUTION OF FUNDS TO STATES—Continued

State	Percentage
Florida	4.768
Georgia	2.735
Hawaii	0.800
Idaho	0.400
Illinois	3.930
Indiana	1.490
Iowa	0.932
Kansas	0.800
Kentucky	1.664
Louisiana	1.723
Maine	0.800
Maryland	1.425
Massachusetts	3.802
Michigan	3.586
Minnesota	1.246
Mississippi	1.701
Missouri	1.701
Montana	0.400
Nebraska	0.400
Nevada	0.400
New Hampshire	0.400
New Jersey	3.755
New Mexico	0.800
New York	12.812
North Carolina	1.977
North Dakota	0.400
Ohio	4.205
Oklahoma	0.800
Oregon	1.353
Pennsylvania	4.421
Rhode Island	0.800
South Carolina	1.090
South Dakota	0.400
Tennessee	2.851
Texas	5.930
Utah	0.400
Vermont	0.400
Virginia	1.348
Washington	1.726
West Virginia	0.782
Wisconsin	1.841
Wyoming	0.400

II. TRADE PROVISIONS

1. Section 1107—Ban on distribution of tobacco products produced by child labor. The Finance Committee amendment to Section 1107 clarifies that the amendment to Section 307 of the Tariff Act of 1930 contained in S. 1415 applies to imports of tobacco products produced by forced or indentured child labor.

2. Section 1133—Limits on the authority to promote the exportation of tobacco. The Finance Committee amendment codifies current policy set out in the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 1998, which prohibits any officer, employee, department or agency of the United States from promoting the sale or export of tobacco products, or from seeking the removal of nondiscriminatory barriers to trade in tobacco. The Finance Committee amendment clarifies that ministerial or clerical functions, such as the collection of export documents by Customs Service officials upon export through a U.S. port, would not constitute promotion of the sale or export of tobacco products within the meaning of section 1133. The Finance Committee clarifies further that United States Trade Representative (USTR) retains the authority to seek redress from discriminatory barriers to U.S. market access, with the proviso that USTR must consult with the Department of Health and Human Services prior to taking such action. Finally, in the Committee's view, nothing in section 1133 should be construed to prohibit the reduction of tariffs or other trade barriers through comprehensive trade negotiations that incidentally include tobacco products, provided that such reductions are not primarily directed at reducing tariffs or trade restraints on tobacco products.

3. Section 1134—Report on impact on U.S. international obligations. The Finance Committee amendment strikes Section 1134 from the bill.

4. Section 1145—Anti-smuggling provisions/prohibition on imports except under a permit. The Finance Committee amendment ensures that the bill imposes identical permit requirements on persons engaged in the production or marketing of tobacco products, regardless of the country or origin of the product and irrespective of their role in the distribution chain, whether through the manufacture, import, sale, distribution or warehousing of tobacco products. The Finance Committee amendment clarifies that the legislation does not create a separate import licensing regime for imports. The legislation does not affect the administration of tariff rate quotas the United States currently imposes on imports of tobacco and manufactured tobacco.

5. Section 1147—Ships stores, duty-free shops, and foreign trade zones. The Finance Committee amendment would permit the continued use of duty-free stores and foreign trade zones for the import, sale, manufacture, distribution, and export of tobacco products, provided that such activities comply with all applicable U.S. laws relating to the import, sale, distribution and/or marking of tobacco products in the customs territory of the United States, including restrictions on sales to minors. The Finance Committee amendment would also prohibit the importation of tobacco or tobacco products previously sold for export and exempt from excise tax as ships stores or in duty-free shops.

III. ELIMINATION OF LIMITATION ON MEDICAID COVERAGE OF SMOKING CESSATION AGENTS

Under the committee amendment, states will not be allowed to exclude from coverage or restrict agents when used to promote smoking cessation. States will maintain the authority to exclude from coverage or restrict nonprescription drugs when used to promote smoking cessation.

IV. MASTECTOMY HEALTH CARE PROVISION

A. PRESENT LAW

Under present law, group health plans must meet certain requirements with respect to limitations on exclusions of preexisting conditions and must not discriminate against individuals based on health status. An excise tax of $100 per day during the period of noncompliance is imposed on the employer sponsoring the plan if the plan fails to meet these requirements. The maximum tax that can be imposed during taxable year cannot exceed the lesser of 10 percent of the employer's group health plan expenses for the prior year or $500,000. No tax is imposed if the Secretary determines that the employer did not know, and exercising reasonable diligence would not have known, that the failure existed.

B. DESCRIPTION OF FINANCE COMMITTEE AMENDMENT

The Finance Committee amendment requires that certain group health plans satisfy two additional requirements: (1) provide for impatient coverage with respect to the treatment of breast cancer, and (2) provide inpatient coverage for reconstructive surgery following mastectomies. Failure to comply with these requirements would result in the same exercise tax applicable to failure to comply with the limitations on exclusions of preexisting conditions and discriminating against individuals based on health status.

The amendment requires a group health plan that provides medical and surgical benefits to ensure that inpatient coverage with respect to the treatment of breast cancer is provided for a period of time as determined by the attending physician to be medically appropriate following: (1) a mastectomy; (2) a lumpectomy; or (3) a lymph node dissection for the treatment of breast cancer.

The amendment requires a group health plan that provides medical and surgical benefits with respect to a mastectomy to ensure that, in a case in which a mastectomy patient elect breast reconstruction, coverage is provided for: (1) all stages of reconstruction

of the breast on which the mastectomy has been performed; (2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and (3) the costs of prostheses and complications of mastectomy including lymphodemas, in the manner determined by the attending physician and the patient to be appropriate.

The amendment requires a group health plan to provide notice to all participants and beneficiaries under the plan of the inpatient coverage available with respect to the treatment of breast cancer and reconstructive surgery following mastectomies.

The amendment does not pre-empt any State law in effect on the date of enactment with respect to health insurance coverage that: (1) requires coverage for a minimum length of hospital stay following a surgical treatment for breast cancer; (2) requires coverage of at least the coverage of reconstructive breast surgery required under the proposal; or (3) requires coverage for breast cancer treatments (including breast reconstruction) in accordance with scientific evidence-based practices or guidelines recommended by established medical associations.

FOOTNOTES

[1] The term United States includes the 50 States and the District of Columbia.

[2] A significant majority of taxable cigarettes, and of taxable tobacco products, is small cigarettes.

[3] These rules may be, but are not required to be, based on the University of Michigan's National High School Drug Use Survey, ''Monitoring the Future'' (the specified source under the Proposed Resolution and S. 1415, as reported by the Commerce Committee.

[4] The term ''net revenues'' means the gross payments received less an income tax offset.

[5] These amounts would be reduced by any refunds of tax previously paid that were properly allocable to revenues deposited into the Tobacco Trust Fund.

[6] As reported by the Commerce Committee, S. 1415 provides that spending for certain programs is to be direct spending. This provision in the Finance Committee amendment supersedes those direct spending provisions (except in the case of amounts deposited into the State Account, described below, and S. 1415's provisions for payments to tobacco farmers).

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I concur in the judgment of our distinguished chairman on the important question of the jurisdiction of the Committee on Finance and I thank him for insisting that it be made clear for the record, as indeed has been done thanks to the distinguished Presiding Officer.

Mr. President, S. 1415, the tobacco legislation now before the Senate, was ordered referred to the Committee on Finance on May 13, 1998. It was so referred because the Senate Parliamentarian determined that the bill is in the jurisdiction of the Finance Committee. That action preserved the jurisdiction over tax legislation for which the Finance Committee has been responsible for 181 years.

The RECORD should be clear that this is indeed a tax bill. The Parliamentarian has so determined; the Joint Committee on Taxation has concurred.

One may refer to certain provisions of this legislation as ''annual payments,'' ''lookback assessments,'' or ''fees,'' but they are taxes. As Richard Cardinal Cushing said, ''When I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck.'' Call it whatever you like, but this bill raises taxes on tobacco, and we're not fooling anybody to suggest otherwise.

And as I have said, taxes have been the jurisdiction of the Committee on Finance for going on two centuries now. In the case of excise taxes, which figure prominently in this bill, the Finance Committee's jurisdiction has been recognized since 1817, the year after the Committee was established. That was the 14th Congress. George W. Campbell of Tennessee, was Chairman; Senator Rufus King, of New York, was Ranking Member.

Likewise our jurisdiction over income taxes has been recognized since the first income tax was enacted in 1861. And the Standing Rules of the Senate have explicitly provided for our jurisdiction over ''revenue measures generally''—tax bills—since 1946, the year that the jurisdictions of all Senate Committees were first set forth in the Rules. I might add that our jurisdiction over international trade matters, which also arise in this bill, is equally clear and equally longstanding.

Our revered Chairman, Senator ROTH, last week insisted—with the full support of our Committee Members—that this legislation be considered by the Finance Committee before it went to the floor. It was referred to us on Wednesday, and we marked it up on Thursday. The vote to report favorably the Finance Committee amendments was 13–6.

The Finance Committee made several important improvements to the bill. First, we converted the assorted ''payments'' and ''assessments'' to taxes. Second, we approved an increase of $1.50 per pack in the tax on tobacco, to be phased in over three years. Third, we struck from the bill a tax on exports that was a clear violation of Article I, Section 9 of the U.S. Constitution. And finally, we adopted an amendment by Senator D'AMATO to require that health plans provide coverage for minimum hospital stays and reconstructive surgery associated with the treatment of breast cancer.

Some of these changes have now been included in the pending Commerce Committee substitute. Owning to the parliamentary situation, some of the other Finance Committee amendments will require separate votes. But thanks to our Chairman, the essential point has been made; the jurisdiction of the Committee on Finance has been preserved and affirmed.

I thank the Chair and yield the floor.

Mr. MCCAIN. Mr. President, I now ask unanimous consent that there be a period for the transaction of routine morning business until 8 p.m., with Senators permitted to speak for up to 10 minutes each.

Mr. ASHCROFT. I object.

The PRESIDING OFFICER. Objection is heard.

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

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. Mr. President, the Senator from Missouri is not recognized for suggesting the absence of a quorum, is that right?

The PRESIDING OFFICER. The Senator from Arizona does not lose the floor when he makes a unanimous consent request.

Mr. MCCAIN. Thank you. Mr. President, the Senate will now take up the National Tobacco Policy and Youth Smoking Reduction Act (S. 1415). Six weeks ago, the Senate Commerce Committee approved this measure by an overwhelming vote of 19–1.

I want to thank the Majority Leader and Senator DASCHLE, and all Senators for allowing this bill to come to the floor. Thanks to the work of so many people including the medical community, especially Dr. Koop, Dr. Kessler; the attorneys general, and so many of our colleagues on both sides of the aisle over many years, Congress has a rare and historic opportunity to put an end to what the American Medical Association calls a ''pediatric epidemic.''

Mr. President tobacco is a legal product that adults may acquire if they choose to do so. Under this bill it will remain so. But the widespread use of tobacco in this country presents a problem every responsible adult would concede will not go away on its own.

Three thousand American children take up the smoking habit every day. For one thousand of them the decision will prove to be fatal. Those children will be among the 460,000 Americans a year who die early—substantially early—from smoking related disease including cancer, emphysema, stroke and heart disease. Warnings about the lethal effect of tobacco have not discouraged juvenile smoking. Sadly, the Center for Disease Control reports that teen smoking is on the rise today.

In recent years, we have learned how callously indifferent tobacco companies are to the loss and suffering their product causes. We have learned how tobacco companies will undermine any public good if it serves their commercial interests. We have learned that nothing, not even the health of children, is off limits to tobacco companies if it serves their bottom line. What profits the nation is a matter of no consequence to tobacco companies if it does not profit them.

Mr. President, we have learned that the tobacco companies, well aware that kids make up the vast majority of their ''replacement'' market have, for years, intentionally and systematically targeted children in their marketing and advertising—kids as young as 13 years old, and even younger.

The disclosure of truckloads of internal industry documents have exposed once and for all the appallingly malicious lie that tobacco executives have for years sworn, often under oath, to be true—that they do not market to children.

They not only have marketed to children, they have thrived on it. And I am

entirely confident that they will continue to do so unless we who are elected to protect the national interest, stand up, at long last, to the tobacco interests. That is what this legislation is intended to do.

Studies show that children are particularly susceptible to the industry's marketing pitches. So effective have these companies been at appealing to youth, many children can identify Joe Camel as readily as they do Barney or cartoon characters.

We have come to learn that as part of their strategy to hook kids early, at any cost, tobacco companies manipulated nicotine levels to enhance its addictive qualities; engaged in sham medical research; quashed information about the danger and addictiveness of tobacco; abused the nation's laws to cloak their activities and lied to Congress and the American people.

Tobacco companies have long hoped that money, in the form of campaign contributions, would enable them to maintain the status quo, and insulate them from the consequences of their actions. For too long, I fear, they have been right.

We are all too familiar with the influence of tobacco money. I appeal to my colleagues, now is the time to stop tobacco companies from buying political indulgence of their intentional sacrifice of our children to the imperatives of preserving a market for their product.

It is illegal for children to purchase tobacco in every state in the country. And in every state in the country, tobacco companies have invested enormous sums of money and time to encourage widespread law breaking.

Now is the time to put an end to it. And, Mr. President, now is also the time to stop the endless drain on taxpayers, which amounts to an annual tax of $50 billion imposed on taxpayers to underwrite tobacco related health care costs—an estimated $1.7 trillion over the life of this bill.

Over the past 3 weeks, the tobacco companies have launched a massive campaign of diversion. Once again, they hope to use their vast resources to divert the country from the truth, and to frustrate us in our task to defend against the threat they pose to our children. As they have so often in the past, the tobacco companies are lying to all of us again, and using their wealth to frighten us all into submission.

I would like to quote Dr. C. Everett Koop who said about this campaign.

> When you see the advertising from the tobacco industry consider the source. These people are experts at manipulation and have been lying to the American people for decades.

Dr. Koop called on all Members of Congress to support tough tobacco legislation. Mr. President, the bill we are presenting to the Senate is indeed tough medicine, for a tough problem. Every expert medical witness who has testified before Congress, as well as every living Surgeon General has called on Congress to pass tough, comprehensive tobacco legislation. The measure we will now consider is exactly that—tough, comprehensive legislation.

The bill is based on the framework of the June 20th settlement between the industry and the state attorneys general and contains the six major elements experts agree are essential if we are to stop kids from smoking.

These include restrictions on marketing aimed at youth; stronger youth access prohibitions; deterrant price increases; regulatory oversight of tobacco ingredients; and counteradvertising campaigns to educate youth.

I would like to address each of these in greater detail. First, like the June 20th settlement, the bill imposes advertising restrictions to eliminate marketing appeals to youth. The bill would implement the FDA rules banning tobacco billboard and outdoor advertising around schools, playgrounds and other areas frequented by children.

It would restrict point-of-sale advertising to ensure that cigarette pitches aren't directed at children and would require bold new warning labels on cigarette packaging.

Second, as contemplated in the June 20th agreement, the bill will raise cigarette prices sufficient to deter youth consumption. Experts say the most important step to deter youth consumption is a substantial hike in the price of tobacco products. I want to say that again, Mr. President. Experts say the most important step to deter youth consumption is a substantial hike in the price of tobacco products.

The Centers for Disease Control reports that smoking less than 100 cigarettes can result in clinical addiction, and that higher pricing is essential to deter underage use. Accordingly, the bill would increase the price per pack of cigarettes by a minimum of $1.10 over five years with a commensurate rise in the price of smokeless tobacco. The administration believes that this hike, included in the President's budget request, would cut youth consumption in half.

Three, the bill establishes the same youth smoking reduction targets agreed to by the industry last summer. Four and one-half million underage Americans use tobacco and the number is growing. The bill calls for a 60 percent reduction in youth consumption within 10 years and levies heavy financial assessments on the industry if they are not achieved. Tobacco companies have skillfully determined how to induce kids to smoke. With ample motivation they can apply those skills to help reverse their handiwork.

Four, stronger enforcement of youth access rules. While smoking by minors is prohibited in every state, kids continue to buy tobacco. The bill would require retailers to be licensed by the state and card tobacco purchasers in the same manner as alcohol sales. And it requires that tobacco products be stored in areas inaccessible to youth. In addition, the bill would ban cigarette sales from vending machines, a major conduit of tobacco products to kids. all of these restrictions were part of last year's settlement.

Five, cigarette ingredient regulation. Cigarettes contain numerous active ingredients harmful to health including nicotine, tar and ammonia. Evidence suggests that the tobacco industry has manipulated these ingredients to enhance their addictive qualities, and in some instances added benign substances such as molasses to sweeten the taste for introductory users, which is how the industry refers to children.

The bill would permit the FDA to oversee and regulate tobacco products to protect public health, and promote the development of safer cigarettes. In rulemaking two years ago, FDA asserted authority over tobacco under its existing ''drug device powers.'' This bill, thanks to the Presiding Officer, Senator FRIST—Dr. FRIST establishes basically the same authorities, but in a separate and distinct chapter of law that addresses tobacco products only.

The legislation, however, imposes several important checks on the FDA authority. Any ban on nicotine or class of tobacco product could not go into effect for two years, enabling Congress market potential of any modification to cigarettes that would push smokers to contraband.

Again, the attorneys general, in their agreement with the industry called for greater FDA oversight of tobacco.

Six, the bill provides funding for smoking prevention and cessation programs; counter-advertising campaigns, and vital health research. These initiatives are financed by annual payments made by the industry.

Smoking related health care costs exceed $50 billion per year. The bill would require the industry to pay $526 billion over the next 25 years to reimburse taxpayers for costs to Medicare and state health care programs. Last summer's agreement called on the industry to pay $368.5 billion. This would have raised the price per pack of cigarettes by $68 cents over 5 years, an amount public health authorities found insufficient to effect youth usage. And the sums would not have been sufficient to pay for assistance to farmers, who were left out of last year's agreement by the industry.

Finally, the bill would place a cap on the tobacco industry's yearly liability exposure without barring any individual or group's ability to sue or receive compensation. The tobacco industry has successfully fended off lawsuits for years. However, the trend is changing and as massive new judgments are awarded against the tobacco industry, bankruptcy is always a possibility.

Experts agree that bankruptcy is an undesirable outcome for the nation economically, legally and medically. Involving bankruptcy would permit the industry to shield themselves from

their financial responsibilities including compensation to victims. When the asbestos companies went bankrupt and left a financial and legal mess that is still with us, only the lawyers made out. Moreover, the extinction of domestic manufacturers would simply push tobacco users to foreign brands or unregulated contraband which would constitute a public health crisis.

We have heard many opinions about whether the industry will submit to this legislation. Legal challenges, of course, would delay reforms, so industry cooperation would be advantageous. While, according to public health authorities, price hikes are essential, they, alone, won't do the job. The proposed advertising restrictions and youth usage penalties, which industry is threatening to challenge, are also essential parts of the solution.

The National Tobacco Policy and Youth Smoking Reduction Act, however, was never intended to be a ''deal'' with the tobacco industry. Our mission was to pass the best possible legislation to stop children from smoking.

As I said, tobacco is a legal product and the decision to use it, though risky, is a choice for adults to make. Nevertheless, the Nation requires that the tobacco industry join us in the fight to protect our children. If they choose not to, the American people will respond accordingly, Congress will act, and the States will resume their lawsuits to extract in court what we might more efficiently achieve through cooperation.

Mr. President, we sent a modification to the bill to the desk in the form of a committee substitute. I would like to take a moment to explain how it would modify the bill as passed by the committee.

First, the amendment addresses the concern expressed by some that the bill was too ''bureaucratic.'' Although the bulk of the panels and boards were temporary, advisory and entailed little or no additional federal costs, and the majority were contemplated in the June 20th Agreement, the Committee substitute eliminates all but three: an unpaid Scientific advisory board at FDA to help assess lower risk tobacco products; a part time board to help formulate counter-advertising strategies; and a three judge panel to assess attorney client privilege claims.

Second, all receipts and disbursements under the act are routed through a single, on-budget, trust fund operated by the Secretary of the Treasury. The amendment eliminates, the role of special trustees; the international trust fund, the farmers trust fund as well as the asbestos trust funds and associated trustees. All funding under the act will come from the single Tobacco trust.

Third, the amendment toughens enforcement against contraband smuggling by requiring that manufacturers and wholesalers be licensed; that records be kept for large transactions. These and other anti-smuggling measures were worked out with the administration.

Four, the amendment drops certain provisions with respect to international marketing that had constitutional problems, or were violations of international law. Among the items dropped was the special licensing fee, the designated trust fund; prohibitions with respect to duty free shops, extraterritorial criminal provisions.

Five, the amendment imposes tougher look-back assessments on the industry. The Committee reported bill capped look-back assessments at $3.5 billion per year. The amendment raises the ceiling to $4 billion, and establishes a company-specific penalty of $1,000 per underage user of a particular tobacco brand beyond the target level.

Six, the amendment modifies the committee bill with respect to second hand smoke. Under the bill as reported, states were given the opportunity to opt out of the federal program. Under the amendment, negotiated with the White House, state can only opt out if they implement their own program that is as effective in protecting public health, based on the best available science.

Seven, the amendment eliminates the asbestos trust fund. In its place the modification authorizes appropriations from the main fund to assist asbestos victims should Congress establish a program to do so.

Eight, the amendment ensures that with certain deminimus exceptions, all tobacco companies, whether it choses to settle its state cases or not, are responsible for the annual payments to effect the $1.10 price increase.

The requirement that non-participating manufacturers pay 150% of the annual payment has been dropped. Instead, manufacturers that wish to settle their state cases must pay the upfront payment they agreed to last year, and sign the state protocols binding them to the additional requirements they agreed to with the state attorneys general, including tougher advertising and marketing restrictions. In return for agreeing to the broader restrictions, and not to challenge their obligations under the protocols, participating companies would receive a yearly liability cap of $8 billion.

In addition, the committee modification drops several civil liability provisions, including a requirement that civil actions be directed at the tobacco manufacturer not its parent company.

Finally, the Committee modification sets out funding parameters for the trust fund.

The Joint Committee on Tax anticipates receipts into the trust fund of nearly $65 billion over five years. Because the payments are volume adjusted, this number could rise or fall depending upon the volume of tobacco sales.

For this reason, the amendment expresses annual funding in terms of percentage of yearly receipts and, except for state funding, places a dollar ceiling should receipt exceed expectations. Any amount above the ceiling would be transferred to the Medicare Trust funds.

Under the modifications, the States would receive 40 percent of the yearly receipts; health research—22 percent; public health programs—22 percent; and farmer assistance—16 percent.

The Office of Management and Budget estimates that under this prescription, States would receive a total of $26 billion over five years. In a modification agreed to by the National Governors Association, 50 percent of the state funds—regarded as the federal share of Medicaid recoupment—will be made available to the states for a menu of purposes, including safe and drug free schools, Child Care and Development Block Grants, substance abuse grants and others. As I said, this menu was agreed to by the National Governors Association.

The other half of the State money would have no menu attached and would be used at the sole discretion of the State.

Mr. President, I would like to briefly comment on the chief criticism of this bill launched by the industry—that it is all about tax and spend Government.

The industry agreed last summer to pay $368 billion and to submit itself to almost every aspect of the legislation we are debating. The agreed to increase the price per pack of cigarettes to reduce youth consumption. They agreed to abide by advertising restrictions. They agreed to submit themselves to lookback assessments. They agreed to enhanced FDA authority over their products. They agreed to stiffer youth access rules and they agreed to open up their documents to the public. And they agreed to finance smoking prevention and cessation programs and health research.

Are the measures tougher than they agreed to? Yes, without question.

Now because the industry fears that the bill may actually achieve what it purports to, the effort has been transmuted from enlightened public policy to tax and spend Government.

Let us be clear, those who vote against this measure because they believe it is tax will merely kill the ability to settle State suits collectively and efficiently so that we can move on to the job at hand—protecting the health of our kids.

If this bill is killed, the States will merely resume their suits, at great cost in terms of money and time, and the outcome will be the same as it has been in Mississippi, Florida, Texas and Minnesota. If we take that unwise course, the ultimate prices in cigarettes will be little different from what might result from this bill, but we will pay an awful price in terms of the 3,000 children a day who will become regular users of tobacco and consign themselves to the consequences before they are adult enough to make that life or death decision.

Mr. President, I asserted earlier that tobacco companies have long sought

refuge in lies. They have lied about the effects of their product and about the strategies they use to market them. They are lying about the purposes and effect of the bill we are now considering. They have spared no expense to cover their purposes with lies. They have lied, no matter the cost to public health. They have sacrificed the truth and our children to their greed. They have lied, because lying has been profitable, Mr. President, because lying worked. No more. No more. The lying stops today.

Mr. President, I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the distinguished chairman, the manager, for his eloquent comments with respect to the debate that now begins in the U.S. Senate.

Senator HOLLINGS has asked me to open on behalf of the committee, and I do so with great respect for his leadership and his involvement in helping to bring the U.S. Senate to a point where we can engage in this consideration. He continues to fight extraordinarily for what he believes in very deeply, and particularly, along with the Senator from Kentucky, for the farmers who may be impacted by this legislation. And that is a fight that we will continue to have over the course of the days ahead.

This is not just the opportunity, Mr. President, for a historic debate; it is an extraordinary opportunity for historic action by the U.S. Senate.

For years, many people across this country have worked hard for this moment. For years, we have waited for the opportunity for the Senate to be able to step up to bat and exercise its responsibility to protect the children of the country. And literally we have the opportunity, whether it is this week, which we hope it might be, or in the next weeks, when it might inevitably be, we have the opportunity to act on behalf of the children of this country in a very direct way that expert after expert, Surgeon General after Surgeon General, pediatrician after pediatrician, cancer specialist after cancer specialist, all have said is necessary for the better health policy of our Nation.

It is a tribute to the outrage in this country that by now millions of Americans understand that 3,000 children will start smoking today and will get hooked—some 6,000 will try it, but 3,000 children will wind up smoking. And of those, 1,000 of them will die early because of the habit they get that they could not kick. Every American has now come to understand the way in which children have been manipulated, aggressively marketed to, in order to suck them into this addiction which ultimately can cost their lives.

That is what we are voting on on the floor of the U.S. Senate. That is what this debate will be about over the course of the next few days. There is a growing awareness now in America that we lose the lives of over 400,000 of our fellow citizens each year because of smoking-related illnesses—more people than we lost in all of World War II, more people than we lost in all of Vietnam and all of Desert Storm combined. And we lose this every year. And it costs us billions of dollars in the health care system of our Nation, in our insurance, in the hospital wards where some people who have no insurance are paid for by the rest of their fellow Americans.

So this week in the Senate, we are moving beyond the point of simply articulating a threat to the children of our country. No one, I think, now disputes the notion that there is harm associated with smoking. And now the U.S. Senate and the Congress need to act with legislation that carries the imprints of both parties, of Senators of both parties, of Governors of both parties, of 44 very tenacious and courageous attorneys general. Now is the time to follow through on their efforts.

I urge all my colleagues—Democrat, Republican, liberal, conservative, no matter what particular passion politically brings them to the U.S. Senate—I urge them over the course of the next days to put aside that partisanship and to try to set aside the inclination to make the perfect the enemy of the very good and to focus today and throughout this week on passing effective legislation that puts America's children out of harm's way and secures for the Senate's legacy one of cooperation and accomplishment, something that many people have felt has been too absent in the workings of the Senate these recent years.

There is a growing feeling that unless we act with a sense of bipartisan and a real dedication to doing what is in the national interest on smoking, that somehow we might let this historic opportunity slip through our fingers. I do not dispute the possibility of that, but, on the other hand, I believe that the Senate clearly has shown its willingness on many occasions in the past to rise to this kind of occasion, to ignore those that Senator MCCAIN just referred to who will spend billions and billions of dollars, who have a long record of misleading America and the Congress with respect to this issue—that we will ignore those special, narrow interests in favor of the larger common interests of our fellow citizens. That is precisely what most of us came here to see this Senate do. And now we can take pride in the possibility of being part of that.

I believe that when my colleagues read the managers' amendment, the bill that is before them, they will find that there is in this a mainstream concept, that there is in this a view that really does represent common sense. I think it is a rare occasion that, on a subject as ripe for dissent as the subject of tobacco, any committee in the Senate could conceivably send a bill to the floor of the Senate by a vote of 19–1.

The Commerce Committee is, in point of fact, a microcosm of the whole Senate. There are the extremes that we have on both sides, the hard-line points of view on both sides; and there is, of course, every point of view in between that somehow finds a center. And I believe that in the end, when all of the debate and all of the anguish over this bill has been worked through, we will find that we will be somewhere relatively close to what the managers' amendment proposes and to what the Senate has advocated.

As I say that, I personally believe there are improvements that can be made. There are things in this bill with which I don't agree. There are things that we have all reserved the right to try to change. What is important, Mr. President, that we permit the Senate, at this moment, to affect that change, that we permit it to work its will and to ultimately vote on a bill.

Senator MCCAIN, I might say, has approached this task by reaching out all across party lines, reaching out to every sector of interest group that is represented in this debate. I know that he and others on the committee have tried to listen hard. It is my belief that when Senators examine the bill, while they will undoubtedly find a particular point of view here or there with which they could find disagreement and make suggestions for improvement, I believe the fact is that they will have a renewed respect for the way in which Senator MCCAIN and the Commerce Committee and Senator HOLLINGS reached out to demonstrate some tough decisionmaking under difficult pressures.

I also believe that in the end the changes that have been made, most of those in the managers' amendment, clearly make this a stronger and better bill than it was when it did leave the Commerce Committee. I remind my colleagues that the Commerce Committee, at the time we sent it out of committee, reserved the right at that point, knowing there were some issues that weren't quite completely vetted, to make changes in a managers' amendment as we brought it to the floor. The structure of the bill has now been changed so that the provisions that are most critical—for reducing youth smoking, the annual payments, the look-back assessments, and the advertising restrictions—will be implemented without the tobacco industry's assent, if that is our only choice.

I think every member of the committee, I am sure every Member of the Senate, would prefer that the tobacco companies were part of the solution and not a continued part of the problem. We would prefer that they were, in fact, signing on to all, everything, that we may embrace here in the Senate. I believe that the industry's participation in youth smoking reduction efforts is obviously preferable, but I think we have made a genuine effort to try to respond to most of their needs. As the chairman pointed out and I will

underscore, almost every concept in this bill was embraced by the tobacco companies in their settlements that they arrived at with the attorneys general. In fact, most of the concepts are arrived at in the settlements they have still reached, most recently last week in Minnesota, with a few exceptions.

The fact is there are some aspects of this that are tougher—but tougher in fact, not tougher in total concept. They do reach farther in amount of money. There are greater limitations on liability because many people believe those liability provisions were too great. But the fundamental principle that there should be some restraints, that there should be some kind of look back, that there should be advertising restraints, that there should be an increase in the price, were all accepted by the companies themselves, and it is certainly subject to debate and to discretion within the Senate to ultimately agree on what those levels ought to be.

When first presented to the Commerce Committee, the tobacco settlement would have provided the tobacco companies with what most people believe was an unprecedented level of immunity from civil action—elimination of class actions, punitive damages. Aggregation of claims would not have been allowed. Claims based on addiction would not have been allowed. It would have allowed parent companies to shield their tobacco profits from liability. It would have risked the ability of injured persons to file State claims. It would have kept those State claims in State courts.

Mr. President, those restraints on the ability of our citizens to be able to seek redress were plain and simply excessive. These liability restrictions are especially dangerous to the public health because this kind of liability threat is, in the final analysis, the strongest and most important insurance that the tobacco companies will take public health concerns seriously, finally, after so many years of ignoring them.

Let me be clear: The bill before the Senate no longer contains special protections for the industry. That, I believe, was an important step towards a workable piece of legislation.

We also must pass legislation that contains high compliance standards to ensure that retailers will stop selling cigarettes to minors. We believe we have strengthened this element of the bill. We penalize States which do not achieve a 90-percent compliance rate after a 5-year grace period. When 62 percent of 12-to 17-year-old children in this Nation report they could succeed in buying their own cigarettes, that nearly half of them have never been asked to provide a positive identification, it seems to me it is time for us, as a nation, to get serious about compliance. This bill does that.

In order to ensure that the tobacco companies actually have sufficient incentives to reduce youth smoking, they and their shareholders must now know that they will pay significantly if youth smoking rates do not decrease dramatically, which means they must join in the efforts to help us reduce smoking among our youth. That is why the look-back assessments are so important.

Under the managers' bill, the cap on industry-wide assessments has been raised to $4 billion, and there are new uncapped company-by-company payments of $1,000 per child who smokes. That is an incentive to be helpful. Not only have the assessments been significantly increased but they are no longer tax deductible. That is, in fact, a greater incentive for people to understand that this bill means business.

In addition, and this is very important to many who have been part of the process, the look-back assessments are now tied to the liability provision so that companies which continue to entice minors will lose any liability protections whatever—that is to say the cap particularly or any other protections in the aggregation preemption.

I think it is nearly universally agreed that we cannot fundamentally regulate tobacco without a strong and effective FDA authority over tobacco products. The distinguished Presiding Officer has played a critical role, along with Dr. Koop and Dr. Kessler, the White House, and the Department of Health and Human Services, in helping to come together in a considerable effort of negotiation in order to come up with FDA authority within this legislation.

The FDA will have specific and broad new authority to regulate tobacco products. Indeed, Dr. Koop has publicly praised the provision as a substantial improvement over the provision in the proposed settlement. I am confident that Dr. Koop, Dr. Kessler, and others will continue to work with Congress on this matter to ensure that the FDA has the authority it needs to protect kids and to promote public health.

What we have before the Senate is not perfect legislation. None of us has ever known a perfect piece, I think, to come to the floor of the Senate. We will have a critical debate in the days ahead about whether or not we can find room for improvement. There are many ideas that different Senators will offer. I look forward to that debate with respect to children, with respect to farmers, with respect to liability, attorney's fees, and other issues.

Finally, we owe a great deal to the leadership and hard work of our colleague, Senator KENT CONRAD, who has spoken out on tobacco with a great deal of passion, but more importantly, who helped, through a long process of working with the task force, to shape and fold what is in front of the Senate today. I appreciate how sensitive Senator CONRAD has been toward passing legislation in this Congress and how seriously he has fought to make certain that Congress will find a middle ground place where all of us can, hopefully, ultimately come to agreement.

In the managers' amendment there are several improvements that reflect Senator CONRAD's priorities and the great work that he has performed as leader of the Democratic task force on tobacco.

So now the full Senate has the opportunity to work its will, to pass this bill with the managers' amendment, to send America into the next century with the knowledge that we are a Nation not just with a responsible policy toward an addictive substance, not just with a responsible policy toward our children, but that we know how to translate our conscience into public legislation, that we can reach beyond partisanship in order to find the common ground.

To my colleagues, I say simply that history has finally put this legislation on the floor of the Senate in a decade-long fight to protect our children. We weren't fighting for party. No one in this fight ought to have an ideological ax to grind.

In the final analysis, the one priority that will bring us together is fundamental: This debate is about our children and it is about our responsibility of raising a generation of healthy children who will live up to their potential, free from the grasp of a dangerous drug. That is our challenge, and I believe that the Senate can meet it.

I join with my colleague, the Senator from Arizona, in suggesting that this is the moment for the Senate to break away from the mendacity, the deception and willful effort to try to undercut the health of our kids over such a long period of time. I hope we are going to do that.

I yield the floor.

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Tennessee is recognized.

Mr. FRIST. Mr. President, over the next several days, we will be discussing a comprehensive piece of legislation that many of us have participated in drafting over the last really 9, 10 months—a piece of legislation, which I think is a superb start to accomplishing the goal on which I hope we will continue to focus. I think we are going to see, over the next several days, a lot of debate and probably a number of amendments. We will see a lot of arguing back and forth and a lot of turf wars will be expressed here on the floor.

I just make a plea to my colleagues that, throughout that period of time, we keep coming back to what our true focus is, the reason for having this bill. It really goes back to some of the data and statistics that have already been mentioned, which I am sure we will mention again and again. But we are here in order to reduce the number of kids smoking, teen smoking, under-age smoking.

We have heard over the last several months about the number of kids who start smoking every day; 3,000 kids start smoking every day. And 1,000, or

1 out of every 3 of those kids who start today, will die prematurely. That means they will die earlier than they would if they had never started smoking. That means a thousand children today, over the last 24 hours, have started smoking and will die before their time because they started smoking today. Ninety percent of all adult smokers began smoking at or before age 18. In fact, 50 percent of all adults smoking today started under the age of 14—maybe 8, 10, 12, or 13 years of age.

The problem we face today—and, of course, I speak as a Senator now, but I also speak as a physician who has taken an oath to dedicate my life to improving the quality of life of others—is that of premature death. It is as simple as that. However, the problem is not getting better, it is actually getting worse. In fact, the percentage of teens smoking every day has increased by 40 percent—these are teenagers, children—from 17 percent of 12th graders smoking in 1992 to 24 percent in 1997. If you look at the teenagers smoking from the 8th grade to the 12th grade, it climbed from 13 percent in 1992 to 18 percent in 1997. So this problem right now is becoming worse.

Really, the statement I want to make and urge all my colleagues to keep in mind is that our focus has to be on the health of the next generation and to keep in mind the challenges that youngsters face as they travel from that very tricky path from childhood to adulthood, surrounded by these temptations. Really, what we need to do is address over the next several days, using the template of this bill now on the floor, and ask the question: What can we do to make it more likely that these children will arrive at adulthood without crippling addictions?

Mr. President, I would like to briefly comment on one aspect of this bill, on which I have spent a great deal of time. I want to comment on it this evening, as this bill is introduced. It is a part of the bill that is greatly misunderstood by many because they haven't yet read the bill or had it presented to them. It has to do with the Food and Drug Administration authority in this bill. I am not going to walk through the provisions, but I want to briefly explain what we set out to do and what is in the bill.

Right now, drugs and medical devices are regulated by the FDA in a single chapter. An attempt has been made by the current administration to regulate tobacco through this chapter, chapter 5 of FDA law, with the authorities given the devices. How and why? It basically is a way, through existing regulation, existing statute or authority, to regulate tobacco as a drug delivery device; but to me it is like taking a round peg and trying to put it in a square hole or taking a square peg and trying to put it in a round hole—it just doesn't fit. It just doesn t fit to try and say that tobacco should be regulated as a drug delivery device. The attempt has been made to regulate tobacco by using the restrictive device authority in chapter V. I point this out because it is the reason we have created a whole new chapter for the regulation of tobacco. This new chapter reflects that tobacco is a unique product, very different from drugs and very different from devices.

Chapter 5 of the Federal Food, Drug and Cosmetic Act is that chapter that, heretofore, an attempt has been made to regulate tobacco through. It is the drug and device chapter. Tobacco just does not fit there. Here is one brief example, so that people will understand why we created a new chapter. Chapter 5 calls on the Secretary to determine whether the regulatory actions taken will ''provide reasonable assurance of the safety and effectiveness'' of the drug or the device.

Well, clearly, tobacco is not safe or effective; we know that. It is dangerous to one's health. That has clearly been demonstrated over the last 20, 25 years. You can talk about the effectiveness of a pacemaker or a heart valve or an artificial heart; you can talk about those devices as being safe and effective. You really cannot apply that to tobacco. Therefore, instead of taking tobacco and ramming it through the drug and device provisions, we felt it was important to look at the unique nature of tobacco, write a separate chapter, and that is what is in the bill today. It is called chapter 9. This gave us the flexibility to create a new standard that was appropriate for tobacco products. The bill states that the Secretary may find that regulations and other requirements imposed on tobacco products ''are appropriate for the protection of public health.'' This is the standard we use instead of the safety and effectiveness standard found in chapter 5.

There are a number of other provisions in the device section that are duplicative or not well-suited when you are attempting to regulate tobacco. Yes, they are appropriate for drugs and devices, but not for tobacco. This chapter 9, which is in the underlying bill, the managers' amendment, contains certain new provisions that grant the secretary explicit authority to undertake regulatory measures particularly relevant to tobacco. It requires manufacturers to submit to the secretary information about the ingredients, components and substances in their products. It requires reporting of the content delivery and form of nicotine in their products. It requires reporting of their research on the health, behavioral, and physiological effects of tobacco products. It requires reporting on the reductions in risks associated with available technology, as well as research on the marketing of tobacco products. Yes, this bill does create a new, separate chapter for regulation of tobacco products. But the reason it is important is because it does not fit, it does not make sense to regulate tobacco as safe or effective.

With that, Mr. President, the only primary change made to the FDA provisions in the underlying McCain bill is a revision which I support. In the managers' amendment there is a prohibition of the FDA from banning tobacco sales from a particular type of retail outlet such as convenience stores. In the managers' amendment, we limit the FDA authority to the removal of the license of individual operators for failure to comply with a licensing agreement. This addresses the concerns by many of the retailers who came forward concerned that the FDA could ban sales from good operators who are not selling to kids because of a few bad actors. I support that revision in the initial FDA provisions of the bill.

In closing, Mr. President, I do have concerns with the McCain bill. I will be open minded when considering amendments to it. I think it is a very good starting point. But it is a starting point. We can and should work on improving it over the next several days as long as we do not lose sight of our ultimate objective. And that is a comprehensive approach that looks at public health initiatives, that looks at youth access issues, that looks at the advertising and marketing, because, I believe, that it is only by having a comprehensive approach that we will achieve the objective of preventing teen smoking.

I will be employing one criterion as I look at each of the amendments as they come forward. And that is, Is this amendment likely to complement a comprehensive campaign to prevent youth smoking? In other words, does it help restrict advertising, promote public health, and address youth access to tobacco with the end result of a reduction in youth smoking?

Mr. President, I yield the floor.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each.

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

HONORING THE AMERICAN AUTOMOBILE ASSOCIATION LIFESAVING MEDAL RECIPIENTS

Mr. DASCHLE. Mr. President, I am proud to announce to the Senate today the names of the two young men who have been selected to receive the 1998 American Automobile Association Lifesaving Medal. This award is the highest honor given to members of the school safety patrol.

There are roughly 500,000 members of the school safety patrol in this country, helping over 50,000 schools. Every day, these young people ensure that their peers arrive safely at school in the morning, and back home in the afternoon.

Most of the time, they accomplish their jobs uneventfully. But on occasion, these volunteers must make split-