

(1) in subsection (b)—

(A) in the first sentence—

(i) by inserting “any of” before “the United States” the first and second places it appears; and

(ii) by inserting before the period the following: “, to any State in which such tobacco product, cigarette papers, or tube was imported, or to the Indian Tribe of any Indian Country (as that term is defined in section 1151 of title 18, United States Code) in which such tobacco product, cigarette papers, or tube was imported”; and

(B) in the second sentence, by inserting “, or to any State or Indian Tribe,” after “the United States”; and

(2) by adding at the end the following new subsection:

“(C) ACTIONS BY STATES AND OTHERS.—

“(1) IN GENERAL.—Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 may bring an action in the United States district courts to prevent and restrain violations of this title by any person (or by any person controlling such person), other than by a State, local, or Tribal government.

“(2) RELIEF FOR STATE, LOCAL, AND TRIBAL GOVERNMENTS.—A State, through its attorney general, or a local government or Tribe through its chief law enforcement officer (or a designee thereof), may in a civil action under this title to prevent and restrain violations of this title by any person (or by any person controlling such person) or to obtain any other appropriate relief for violations of this title by any person (or from any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief.

“(3) CONSTRUCTION GENERALLY.—

“(A) IN GENERAL.—Nothing in this subsection shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian Tribe against any unconsented lawsuit under this title or to otherwise restrict, expand, or modify any sovereign immunity of a State local government or Indian Tribe.

“(B) CONSTRUCTION WITH OTHER RELIEF.—The remedies available under this subsection are in addition to any other remedies available under Federal, State, local, Tribal, or other law.

“(4) CONSTRUCTION WITH FORFEITURE PROVISIONS.—Nothing in this subsection shall be construed to require a State or Indian Tribe to first bring an action pursuant to paragraph (1) when pursuing relief under subsection (b).

“(d) CONSTRUCTION WITH OTHER AUTHORITIES.—

“(1) STATE AUTHORITIES.—Nothing in this title shall be construed to expand, restrict, or otherwise modify the right of an authorized State official from proceeding in State court, or taking other enforcement actions, on the basis of alleged violation of State or other law.

“(2) TRIBAL AUTHORITIES.—Nothing in this title shall be construed to expand, restrict, or otherwise modify the right of an authorized Indian Tribal government official from proceeding in Tribal court, or taking other enforcement actions, on the basis of alleged violation of Tribal law.

(d) INCLUSION OF SMOKELESS TOBACCO.—(1) Sections 802 and 803(a) of such Act are further amended by inserting “or smokeless tobacco products” after “cigarettes” each place it appears.

(2) Section 802 of such Act is further amended—

(A) in subsection (a)—

(i) in paragraph (1), by inserting “or section 4 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4403), respectively” after “section 7 of the

Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a)”;

(ii) in paragraph (2), by inserting “or section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), respectively,” after “section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333)”;

(iii) in paragraph (3), by inserting “or section 3(c) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402(c)), respectively,” after “section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c))”;

(B) in subsection (b)—

(i) in the paragraph caption of paragraph (1), by inserting “OR SMOKELESS TOBACCO” after “CIGARETTES”;

(ii) in the paragraph caption of paragraphs (2) and (3), by inserting “OR SMOKELESS TOBACCO” after “CIGARETTES”;

(C) in subsection (c)—

(i) in the subsection caption, by inserting “OR SMOKELESS TOBACCO” after “CIGARETTE”;

(ii) in paragraph (1), by inserting “or section 4 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4403), respectively” after “section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a)”;

(iii) in paragraph (2)(A), “or section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), respectively,” after “section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333)”;

(iv) in paragraph (2)(B), by inserting “or section 3(c) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402(c)), respectively” after “section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c))”.

(3) Section 803(c) of such Act, as amended by subsection (b)(1) of this section, is further amended by inserting “, or any smokeless tobacco product,” after “or tube” the first place it appears.

(4)(A) The heading of title VIII of such Act is amended by inserting “AND SMOKELESS TOBACCO” after “CIGARETTES”.

(B) The heading of section 802 of such Act is amended by inserting “AND SMOKELESS TOBACCO” after “CIGARETTES”.

SEC. 9. EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS.

(a) IN GENERAL.—Nothing in this Act or the amendments made by this Act is intended nor shall be construed to affect, amend, or modify—

(1) any agreements, compacts, or other intergovernmental arrangements between any State or local government and any government of an Indian tribe (as that term is defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))) relating to the collection of taxes on cigarettes or smokeless tobacco sold in Indian Country (as that term is defined section 1151 of title 18, United States Code);

(2) any State laws that authorize or otherwise pertain to any such intergovernmental arrangements or create special rules or procedures for the collection of State, local, or tribal taxes on cigarettes or smokeless tobacco sold in Indian Country;

(3) any limitations under existing Federal law, including Federal common law and treaties, on State, local, and tribal tax and regulatory authority with respect to the sale, use, or distribution of cigarettes and smokeless tobacco by or to Indian Tribes or tribal members or in Indian Country;

(4) any existing Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any Tribe, tribal members or tribal reservations; and

(5) any existing State or local government authority to bring enforcement actions against persons located in Indian Country.

(b) COORDINATION OF LAW ENFORCEMENT.—Nothing in this Act or the amendments made by this Act shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by 1 or more States or other jurisdictions, including Indian Tribes, through interstate compact or otherwise, that—

(1) provides for the administration of tobacco product laws or laws pertaining to interstate sales or other sales of tobacco products;

(2) provides for the seizure of tobacco products or other property related to a violation of such laws; or

(3) establishes cooperative programs for the administration of such laws.

(c) TREATMENT OF STATE AND LOCAL GOVERNMENTS.—Notwithstanding any other provision of this Act, the provisions of this Act are not intended and shall not be construed to authorize, deputize, or commission States or local governments as instrumentalities of the United States.

(d) ENFORCEMENT WITHIN INDIAN COUNTRY.—Nothing in this Act or the amendments made by this Act is intended to prohibit, limit, or restrict enforcement by the Attorney General of the United States of the provisions herein within Indian Country.

(e) AMBIGUITY.—Any ambiguity between the language of this section or its application, and any other provision of this Act shall be resolved in favor of this section.

SEC. 10. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall take effect 90 days after the date of the enactment of this Act.

(b) BATFEE AUTHORITY.—

(1) IN GENERAL.—Sections 6 and 7 shall take effect on the date of the enactment of this Act.

(2) DEFINITION.—For purposes of section 7, the definition of delivery sale in section 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act, shall take effect on the date of the enactment of this Act.

Passed the Senate December 9, 2003.

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.J. Res. 82, making technical corrections to the continuing resolution. I further ask unanimous consent that the joint resolution be read the third time and passed and the motion to reconsider be laid upon the table.

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

The joint resolution (H.J. Res. 82) was read the third time and passed.

FUNDING TO ASSIST IN MEETING OFFICIAL EXPENSES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 282, submitted earlier today by Senator STEVENS.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 282) providing the funding to assist in meeting the official expenses of a preliminary meeting relative to the formation of a United States Senate-China interparliamentary group.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to this resolution be printed in the RECORD.

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

The resolution (S. Res. 282) was agreed to, as follows:

S. RES. 282

Resolved, That—

(1) there is authorized within the contingent fund of the Senate under the appropriation account "MISCELLANEOUS ITEMS" \$75,000 for fiscal year 2004 to assist in meeting the official expenses of a preliminary meeting relative to the formation of a United States Senate-China interparliamentary group including travel, per diem, conference room expenses, hospitality expenses, and food and food-related expenses;

(2) such expenses shall be paid on vouchers to be approved by the President pro tempore of the Senate; and

(3) the Secretary of the Senate is authorized to advance such sums as necessary to carry out this resolution.

PROTECTING CHILDREN FROM INDECENT PROGRAMMING

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration S. Res. 283, a sense-of-the-Senate resolution submitted earlier today by Senator SESSIONS.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 283) affirming the need to protect children in the United States from indecent programming.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to; that the preamble be agreed to; that the motions to reconsider be laid upon the table; and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 283) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 283

Whereas millions of people in the United States are increasingly concerned with the patently offensive television and radio programming being sent into their homes;

Whereas millions of families in the United States are particularly concerned with the adverse impact of this programming on children;

Whereas indecent and offensive programming is contributing to a dramatic coarsening of civil society of the United States;

Whereas the Federal Communications Commission is charged with enforcing standards of decency in broadcast media;

Whereas the Federal Communications Commission established a standard defining what constitutes indecency in the declaratory order In the Matter of a Citizen's Complaint Against Pacifica Foundation Station WBAI(FM), 56 F.C.C.2d 94 (1975) (referred to in this Resolution as the "Pacifica order");

Whereas the Federal Communications Commission has not used all of its available authority to impose penalties on broadcasters that air indecent material even when egregious and repeated violations have been found in the cases of WKRK-FM, Detroit, MI, File No. EB-02-IH-0109 (Apr. 3, 2003) and WNEW-FM, New York, New York, EB-02-IH-0685 (Sept. 30, 2003).

Whereas the standard established in the Pacifica order focuses on protecting children from exposure to indecent language;

Whereas the standard established in the Pacifica order was upheld as constitutional by the United States Supreme Court in *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726 (1978);

Whereas the Enforcement Bureau of the Federal Communications Commission has refused to sanction the airing of indecent language during the broadcast of the Golden Globe Awards, at a time when millions of children were in the potential audience; and

Whereas as of December 2003, an application for review is pending before the Federal Communications Commission, requesting that the full Commission review that decision of the Enforcement Bureau: Now, therefore, be it

(1) the Federal Communications Commission should return to vigorously and expeditiously enforcing its own United States Supreme Court-approved standard for indecency in broadcast media, as established in the declaratory order In the Matter of a Citizen's Complaint Against Pacifica Foundation Station WBAI(FM), 56 F.C.C.2d 94 (1975);

(2) the Federal Communications Commission should reassert its responsibility as defender of the public interest by undertaking new and serious efforts to sanction broadcast licensees that refuse to adhere to the standard established in that order;

(3) the Federal Communications Commission should make every reasonable and lawful effort to protect children from the degrading influences of indecent programming;

(4) The Federal Communications Commission should use all of its available authority to protect the public from indecent broadcasts including: (1) the discretion to impose fines up to a statutory maximum for each separate "utterance" or "material" found to be indecent; and (2) the initiation of license revocation proceedings for repeated violations of its indecency rules;

(5) The Federal Communications Commission should resolve all indecency complaints expeditiously; and should consider reviewing such companies at the full Commission level; and

(6) The Federal Communications Commission should aggressively investigate and enforce all indecency allegations.

THE CHANGING NATURE OF THE HOUSE SPEAKERSHIP: THE CANNON CENTENARY CONFERENCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 345 which is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 345) authorizing the printing as a House document of the transcripts of the proceedings of "The Changing Nature of the House Speakership: The Cannon Centenary Conference," sponsored by the Congressional Research Service on November 12, 2003.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. I ask unanimous consent that the concurrent resolution be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 345) was agreed to.

DEATH OF SENATOR PAUL SIMON

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 281, a sense-of-the-Senate resolution submitted earlier today by Senators FITZGERALD, DURBIN, myself, and Senator DASCHLE.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 281) relative to the death of the Honorable Paul Simon, a former Senator from the State of Illinois.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 281) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 281

Whereas the Honorable Paul Simon at the age of 19 became the nation's youngest editor-publisher when he accepted a Lion's Club challenge to save the Troy Tribune in Troy, Illinois, and built a chain of 13 newspapers in southern and central Illinois;

Whereas the Honorable Paul Simon used his newspaper to expose criminal activities, and in 1951, at age 22, was called as a key witness to testify before the U.S. Senate's Crime Investigating Committee;

Whereas the Honorable Paul Simon served in the Illinois legislature for 14 years, winning the Independent Voters of Illinois' "Best Legislator Award" every session;

Whereas the Honorable Paul Simon was elected lieutenant governor in 1968 and was the first in Illinois' history to be elected to that post with a governor of another party;

Whereas the Honorable Paul Simon served Illinois in the United States House of Representatives and the United States Senate with devotion and distinction;

Whereas the Honorable Paul Simon is the only individual to have served in both the Illinois House of Representatives and the Illinois Senate, and the U.S. House of Representatives and U.S. Senate.