

107TH CONGRESS
1ST SESSION

H. R. 1044

To prevent children from using tobacco products, to reduce the health costs attributable to tobacco products, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2001

Mr. WAXMAN (for himself, Mr. HANSEN, Mr. MEEHAN, Mrs. MORELLA, Mr. DOGGETT, Mr. BONIOR, Ms. DEGETTE, Mrs. CAPPS, Ms. DELAURO, Mr. LANTOS, Mr. MARKEY, Mr. STARK, Mr. ALLEN, Mr. McDERMOTT, Ms. SCHAKOWSKY, Mr. OLVER, Mr. HINCHEY, Ms. NORTON, Mrs. TAUSCHER, Mr. OBERSTAR, Mr. GEORGE MILLER of California, Ms. RIVERS, Mr. BALDACCI, Mr. PAYNE, Mr. BORSKI, Ms. ROYBAL-ALLARD, Mr. LAFALCE, Mr. KILDEE, Mr. DEFazio, Ms. SLAUGHTER, Ms. PELOSI, Mr. COYNE, Mr. BLUMENAUER, Mrs. MALONEY of New York, Mr. WEXLER, Mr. MCGOVERN, Ms. CARSON of Indiana, and Ms. SOLIS,) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prevent children from using tobacco products, to reduce the health costs attributable to tobacco products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Child Tobacco Use Prevention Act of 2001”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FDA JURISDICTION OVER TOBACCO PRODUCTS

Sec. 101. Reference.
 Sec. 102. Definitions.
 Sec. 103. Amendments to chapter V.
 Sec. 104. Validation of the FDA rule.
 Sec. 105. Special provisions for tobacco products.
 Sec. 106. General provisions.
 Sec. 107. Repeal.

TITLE II—PERFORMANCE OBJECTIVES TO REDUCE CHILD
 TOBACCO USE

Sec. 201. Annual performance surveys.
 Sec. 202. Performance objectives.
 Sec. 203. Additional measures to reduce child tobacco use.
 Sec. 204. Proceeds of price increases.
 Sec. 205. Judicial review.
 Sec. 206. General provisions.
 Sec. 207. Use of tobacco products among minority populations.
 Sec. 208. Definitions.

TITLE III—SMOKE-FREE ENVIRONMENTS

Sec. 301. Smoke-free environment policy.
 Sec. 302. Citizen actions.
 Sec. 303. Regulations.
 Sec. 304. Definitions.
 Sec. 305. Preemption.
 Sec. 306. Effective date.

TITLE IV—TOBACCO PREVENTION INITIATIVES

Sec. 401. National public awareness campaign.
 Sec. 402. Federal implementation.
 Sec. 405. Minority populations.
 Sec. 406. Inflation adjustment.

3 **TITLE I—FDA JURISDICTION**
 4 **OVER TOBACCO PRODUCTS**

5 **SEC. 101. REFERENCE.**

6 Whenever in this title an amendment or repeal is ex-
 7 pressed in terms of an amendment to, or repeal of, a sec-
 8 tion or other provision, the reference shall be considered

1 to be made to a section or other provision of the Federal
2 Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

3 **SEC. 102. DEFINITIONS.**

4 (a) DRUG.—Section 201(g)(1) (21 U.S.C. 321(g)(1))
5 is amended by striking “; and (D)” and inserting “; (D)
6 nicotine in tobacco products; and (E)”.

7 (b) DEVICES.—Section 201(h) (21 U.S.C. 321(h)) is
8 amended by adding at the end the following: “Such term
9 includes a tobacco product.”.

10 (c) OTHER DEFINITIONS.—Section 201 (21 U.S.C.
11 321) is amended by adding at the end the following:

12 “(kk) The term ‘tobacco product’ means any product
13 made or derived from tobacco that is intended for human
14 consumption.”.

15 **SEC. 103. AMENDMENTS TO CHAPTER V.**

16 (a) MISBRANDING.—Section 502 (21 U.S.C. 360) is
17 amended by adding at the end the following:

18 “(u) In the case of a tobacco product, if it does not
19 comply with a requirement under subchapter F.”.

20 (b) CLARIFICATION OF AUTHORITY.—Section 520(e)
21 (21 U.S.C. 360j(e)) is amended by adding at the end the
22 following:

23 “(3) In the case of tobacco products, the restrictions
24 on sale and distribution authorized by paragraph (1) shall

1 include restrictions on advertising and promotion of to-
2 bacco products.”.

3 (c) PREEMPTION.—Section 521(a) (21 U.S.C.
4 360k(a)) is amended—

5 (1) by striking “Except as provided in sub-
6 section (b)” and inserting “Except in the case of to-
7 bacco products and as provided in subsection (b)”;
8 and

9 (2) by adding at the end the following:

10 “TOBACCO PRODUCTS

11 “(c) If the package or advertisement of a tobacco
12 product is required to bear a warning under this Act, no
13 statement relating to the use of the tobacco product and
14 health, other than a statement required under this Act,
15 may be required by any State or local statute or regulation
16 to be included on any package or in any advertisement
17 of such tobacco product.”.

18 **SEC. 104. VALIDATION OF THE FDA RULE.**

19 (a) IN GENERAL.—All provisions of the regulations
20 related to tobacco products promulgated by the Secretary
21 of Health and Human Services on August 28, 1996 (61
22 Fed. Reg. 44396) shall be considered to be lawful, and
23 to have been lawfully promulgated, under the Federal
24 Food, Drug, and Cosmetic Act.

1 (b) EFFECTIVE DATE.—All provisions of such regula-
2 tions shall take effect upon the expiration of 1 year after
3 the date of the enactment of this Act.

4 **SEC. 105. SPECIAL PROVISIONS FOR TOBACCO PRODUCTS.**

5 Chapter V is amended by adding at the end the fol-
6 lowing:

7 **“Subchapter F—Special Provisions for**
8 **Tobacco Products**

9 **“SEC. 565. SPECIAL STANDARD FOR TOBACCO PRODUCTS.**

10 “In the case of tobacco products, an action that pro-
11 vides appropriate protection of public health shall be
12 deemed to provide a reasonable assurance of safety and
13 effectiveness.

14 **“SEC. 566. IMPLEMENTATION OF THE PROPOSED RESOLU-**
15 **TION.**

16 “(a) ADDITIONAL RESTRICTIONS ON MARKETING,
17 ADVERTISING, AND ACCESS.—Not later than 18 months
18 after the date of the enactment of this subchapter, the
19 Secretary shall revise the regulations related to tobacco
20 products promulgated by the Secretary on August 28,
21 1996 (61 Fed. Reg. 44396) to include the additional re-
22 strictions on marketing, advertising, and access described
23 in Title IA and Title IC of the Proposed Resolution en-
24 tered into by the tobacco manufacturers and the State at-
25 torneys general on June 20, 1997, except that the Sec-

1 retary shall not include an additional restriction on mar-
2 keting or advertising in such regulations if its inclusion
3 would violate the First Amendment to the Constitution.

4 “(b) WARNINGS.—

5 “(1) CIGARETTES AND SMOKELESS TOBACCO.—

6 Not later than 18 months after the date of the en-
7 actment of this subchapter, the Secretary shall pro-
8 mulgate regulations to require warnings on cigarette
9 and smokeless tobacco labeling and advertisements.
10 The content, format, and rotation of warnings shall
11 conform to the specifications described in Title IB of
12 the Proposed Resolution entered into by the tobacco
13 manufacturers and the State attorneys general on
14 June 20, 1997.

15 “(2) PROHIBITION.—It shall be unlawful to ad-
16 vertise tobacco products on any medium of electronic
17 communication subject to the jurisdiction of the
18 Federal Communications Commission.

19 “(c) INGREDIENTS.—

20 “(1) IN GENERAL.—Not later than 18 months
21 after the date of enactment of this subchapter, the
22 Secretary shall promulgate regulations relating to
23 ingredients in tobacco products. Except as provided
24 in paragraph (2), such regulations shall conform to
25 the specifications described in Title IF of the Pro-

1 posed Resolution entered into by the tobacco manu-
2 facturers and the State attorneys general on June
3 20, 1997.

4 “(2) FAILURE TO ACT.—If the Secretary fails
5 to approve or disapprove an ingredient’s safety with-
6 in the review period prescribed under the regulations
7 under paragraph (1), such failure shall not be con-
8 sidered an approval of such ingredient.

9 “(d) REDUCED-RISK PRODUCTS.—No manufacturer
10 of a tobacco product may state or imply in the labeling
11 or advertisements of the tobacco product that the tobacco
12 product presents a reduced risk to health unless the Sec-
13 retary has determined that the tobacco product does
14 present a significantly reduced risk to health.

15 “(e) OTHER AUTHORITY.—This section does not
16 limit the authority the Secretary has under other provi-
17 sions of this Act with respect to tobacco products.

18 **“SEC. 567. STATE TOBACCO CONTROL PROGRAMS.**

19 “(a) IN GENERAL.—Effective 2 years after the date
20 of the enactment of this subchapter, a State may not re-
21 ceive funds under this Act for tobacco control activities
22 unless the State has put into law a State tobacco control
23 program that conforms to the model State program estab-
24 lished by the Secretary under subsection (b).

25 “(b) MODEL STATE PROGRAM.—

1 “(1) GENERAL RULE.—Within one year of the
2 date of the enactment of this subchapter, the Sec-
3 retary shall establish a model State tobacco control
4 program.

5 “(2) PROGRAM CONTENT.—The model State to-
6 bacco control program established under paragraph
7 (1) shall—

8 “(A) require persons who sell tobacco
9 products to individuals for personal consump-
10 tion to obtain a license from the State;

11 “(B) require licensed retailers to comply
12 with the requirements under this Act that are
13 applicable to tobacco product retailers;

14 “(C) prohibit any individual from pur-
15 chasing tobacco products for resale or distribu-
16 tion to individuals under the age of 18;

17 “(D) include minimum requirements for
18 the conduct and frequency of compliance in-
19 spections of licensed retailers;

20 “(E) include State performance objectives,
21 including objectives for reducing the level of vio-
22 lations observed during compliance inspections;

23 “(F) include provisions for appropriate
24 penalties for violations of the program require-

1 ments, including provisions for license suspen-
2 sion and revocation; and

3 “(G) include such other provisions as the
4 Secretary determines are appropriate to protect
5 public health.

6 “(c) FAILURE TO IMPLEMENT.—If a State fails to
7 effectively implement a State tobacco control program
8 which conforms to the Model State program established
9 under subsection (b) or if a State fails to achieve the per-
10 formance objectives applicable to the State under the
11 Model State program, the Secretary shall withhold up to
12 20 percent of the funds made available under this Act to
13 the State for tobacco control activities.

14 “(d) FEDERAL LICENSING PROGRAM.—Within one
15 year of the date of the enactment of this subchapter, the
16 Secretary shall establish Federal licensing requirements
17 for—

18 “(1) tobacco product retailers operating on
19 Federal property;

20 “(2) tobacco product retailers operating in a
21 State which does not put into law or effectively im-
22 plement a State tobacco control program which con-
23 forms to the Model State Program; and

24 “(3) such other tobacco product retailers as the
25 Secretary may specify.

1 The Federal tobacco control requirements shall conform
2 to the licensing requirements of the Model State Program.

3 “(e) FEDERAL AUTHORITY.—The Secretary may
4 order a retailer licensed by a State to suspend or cease
5 selling tobacco products if the tobacco product retailer is
6 in violation of a requirement under this Act related to to-
7 bacco products.

8 “(f) INDIAN TRIBES.—In the case of tobacco product
9 retailers operating on Indian reservations, the governing
10 Indian tribe or tribal organization shall be treated as a
11 State.”.

12 **SEC. 106. GENERAL PROVISIONS.**

13 (a) ENFORCEMENT.—Section 301 (21 U.S.C. 331) is
14 amended by adding at the end the following:

15 “(bb) The violation of any requirement under this Act
16 relating to tobacco products.”.

17 (b) ACCESS TO INFORMATION.—Section 701 (21
18 U.S.C 371) is amended by adding at the end the following:

19 “(h) To acquire information related to tobacco prod-
20 ucts, the Secretary may administer oaths and require the
21 testimony of witnesses and the production of documents
22 and other materials. The Secretary may disclose to the
23 public information acquired under this subsection if the
24 Secretary determines that disclosure is appropriate to pro-
25 tect public health.”.

1 **SEC. 107. REPEAL.**

2 The Federal Cigarette Labeling and Advertising Act
3 (15 U.S.C. 1331 et seq.) and the Comprehensive Smoke-
4 less Tobacco Health Education Act of 1986 (15 U.S.C.
5 4401 et seq.) are repealed on the date the regulations de-
6 scribed in section 566(b) of the Federal Food, Drug, and
7 Cosmetic Act take effect.

8 **TITLE II—PERFORMANCE OB-**
9 **JECTIVES TO REDUCE CHILD**
10 **TOBACCO USE**

11 **SEC. 201. ANNUAL PERFORMANCE SURVEYS.**

12 Within 1 year after the date of the enactment of this
13 Act and annually thereafter the Secretary shall conduct
14 a survey to determine for each manufacturer the percent-
15 age of children who use a tobacco product of the manufac-
16 turer.

17 **SEC. 202. PERFORMANCE OBJECTIVES.**

18 (a) PERFORMANCE OBJECTIVES FOR EXISTING MAN-
19 UFACTURERS.—Each existing manufacturer shall have as
20 a performance objective the reduction of its child tobacco
21 use level below its baseline level by at least the following
22 percentage of its baseline level:

23 (1) In the third and fourth annual performance
24 surveys, 33 percent.

25 (2) In the fifth and sixth annual performance
26 surveys, 50 percent.

1 (3) In the seventh, eighth, and ninth annual
2 performance surveys, 67 percent.

3 (4) In the tenth and each succeeding annual
4 performance survey, 80 percent.

5 However, in no case is the performance objective for a
6 manufacturer to reduce its child tobacco use level below
7 the de minimis level.

8 (b) PERFORMANCE OBJECTIVES FOR NEW MANU-
9 FACTURERS.—Beginning with the third annual perform-
10 ance survey, a new manufacturer shall have as its per-
11 formance objective maintaining its child tobacco use level
12 at no more than the de minimis level.

13 (c) LEVELS.—For purposes of this title:

14 (1) BASELINE LEVEL.—The baseline level of
15 each manufacturer is the manufacturer's child to-
16 bacco use level determined in the first annual per-
17 formance survey.

18 (2) DE MINIMIS LEVEL.—The de minimis level
19 is 0.5 percent of children.

20 **SEC. 203. ADDITIONAL MEASURES TO REDUCE CHILD TO-**
21 **BACCO USE.**

22 (a) SECRETARIAL DETERMINATION.—Before the end
23 of the third year after the date of the enactment of this
24 Act and annually thereafter, the Secretary shall, based on
25 the annual performance survey conducted for such year,

1 determine if each manufacturer has achieved the applica-
2 ble performance objective under section 202. The Sec-
3 retary shall publish in the Federal Register such deter-
4 mination and any additional measures required under this
5 section.

6 (b) FAILURE TO ACHIEVE.—If the Secretary deter-
7 mines under subsection (a) that a manufacturer has failed
8 to achieve the applicable performance objective for an an-
9 nual performance survey, the additional measures speci-
10 fied in this section shall be required to further reduce the
11 manufacturer’s child tobacco use level.

12 (c) FIRST FAILURE.—If the Secretary determines
13 under subsection (a) that a manufacturer has failed to
14 achieve the applicable performance objective for an annual
15 performance survey and the manufacturer did not so fail
16 with respect to the prior survey, the manufacturer shall
17 for each unit of its tobacco products increase the price
18 it charges by—

19 (1) \$0.01 for each of the first 10 percentage
20 points by which the manufacturer fails to achieve its
21 performance objective; plus

22 (2) \$0.02 for each of the second 10 percentage
23 points, if any, by which the manufacturer fails to
24 achieve its performance objective; plus

1 (3) \$0.03 for each additional percentage point
2 over 21, if any, by which the manufacturer fails to
3 achieve its performance objective.

4 (d) SECOND FAILURE.—If the Secretary determines
5 under subsection (a) that a manufacturer has failed to
6 achieve the applicable performance objective for an annual
7 performance survey and such failure is the manufacturer’s
8 second consecutive failure, the manufacturer shall for each
9 unit of its tobacco products increase the price it charges
10 by twice the level required under subsection (c).

11 (e) THIRD FAILURE.—If the Secretary determines
12 under subsection (a) that a manufacturer has failed to
13 achieve the applicable performance objective for an annual
14 performance survey and such failure is the manufacturer’s
15 third consecutive failure, the following additional measures
16 shall apply:

17 (1) The manufacturer shall for each unit of its
18 tobacco products increase the price it charges by the
19 level prescribed by subsection (d).

20 (2) No retailer may sell the tobacco products of
21 the manufacturer in quantities smaller than a car-
22 ton.

23 (f) FOURTH AND SUCCESSIVE FAILURES.—If the
24 Secretary determines under subsection (a) that a manu-
25 facturer has failed to achieve the applicable performance

1 objective for an annual performance survey and such fail-
2 ure is the manufacturer's fourth or more consecutive fail-
3 ure, the following additional measures shall apply:

4 (1) The manufacturer shall for each unit of its
5 tobacco products increase the price it charges by the
6 level prescribed by subsection (d).

7 (2) No retailer may sell the tobacco products of
8 the manufacturer in quantities smaller than a car-
9 ton.

10 (3) The manufacturer may package its tobacco
11 products only in packages that bear only black text
12 on a white background except for warning labels
13 that are required to appear in a different format.

14 (g) EFFECTIVE DATES.—

15 (1) PRICE INCREASES.—If the Secretary deter-
16 mines under subsection (a) that a manufacturer has
17 failed to achieve the applicable performance objective
18 for an annual performance survey, the price increase
19 that is required under this section as a result of
20 such determination shall apply to each unit of its to-
21 bacco products manufactured or imported in the
22 United States during the 12-month period beginning
23 30 days after the determination, except that such
24 price increase shall not apply to tobacco products

1 that are manufactured or imported by the manufac-
2 turer for export.

3 (2) NON-MONETARY MEASURES.—The Sec-
4 retary shall by regulation prescribe an effective date
5 that is as expeditious as practicable for the non-
6 monetary additional measures described in sub-
7 sections (e) and (f). Such measures shall remain in
8 effect until the Secretary determines under sub-
9 section (a) that the manufacturer has achieved the
10 applicable performance objective for an annual per-
11 formance survey.

12 (h) ADJUSTMENTS.—

13 (1) GENERAL RULE.—The amount of any price
14 increase that is required under this section shall be
15 increased by the percentage increase in the Con-
16 sumer Price Index for all urban consumers (all
17 items, U.S. city average) from 2001 to the year be-
18 fore the year in which the price increase takes effect.

19 (2) LIMITATION.—The maximum price increase
20 that shall be required under this section for a unit
21 of a tobacco product is \$2 plus an adjustment for
22 inflation under paragraph (1).

23 (i) CALCULATION OF PERCENTAGE POINTS.—For
24 purposes of determining the level of price increase under
25 this section, the number of percentage points by which a

1 manufacturer fails to achieve a performance objective shall
2 be calculated as follows:

3 (1) MANUFACTURER WITH CHILD TOBACCO USE
4 LEVEL AT OR BELOW ITS BASELINE LEVEL.—If the
5 manufacturer is an existing manufacturer which has
6 a baseline level above the de minimis level and a
7 child tobacco use level equal to or below its baseline
8 level, the number of percentage points shall equal
9 the difference between the percentage reduction in
10 its child tobacco use level required to meet the appli-
11 cable performance objective and the percentage re-
12 duction in its child tobacco use level achieved by the
13 manufacturer.

14 (2) MANUFACTURER WITH CHILD TOBACCO USE
15 LEVEL ABOVE ITS BASELINE LEVEL.—If the manu-
16 facturer is an existing manufacturer which has a
17 baseline level above the de minimis level and a child
18 tobacco use level above its baseline level, the number
19 of percentage points shall equal the sum of the per-
20 centage reduction in its child tobacco use level re-
21 quired to meet the applicable performance objective
22 and the percentage by which its child tobacco use
23 level exceeds its baseline level.

24 (3) EXISTING MANUFACTURER WITH A BASE-
25 LINE LEVEL BELOW THE DE MINIMIS LEVEL OR

1 NEW MANUFACTURER.—If the manufacturer is an
2 existing manufacturer which has a baseline level
3 below the de minimis level or if the manufacturer is
4 a new manufacturer, the number of percentage
5 points shall equal the percentage by which its child
6 tobacco use level exceeds the de minimis level.

7 **SEC. 204. PROCEEDS OF PRICE INCREASES.**

8 (a) PAYMENT.—A manufacturer that is required to
9 increase prices under section 203 shall pay into an account
10 in the United States Treasury an amount equal to the
11 amount of the increase multiplied by the number of units
12 of the product to which the increase is required to be ap-
13 plied under such section. Such amount shall be paid by
14 a manufacturer on a quarterly basis within 30 days after
15 the end of each quarter in which the price increase is in
16 effect.

17 (b) USE OF FUNDS.—Funds in the account referred
18 to in subsection (a) shall be available to the Secretary,
19 without fiscal year limitation, to enforce this title and
20 other laws relating to tobacco use by children and for pub-
21 lic awareness campaigns and other initiatives designed to
22 discourage children from using tobacco products and prod-
23 ucts described in section 206(b)(2).

1 **SEC. 205. JUDICIAL REVIEW.**

2 (a) IN GENERAL.—An action of the Secretary under
3 this title is not subject to judicial review until the Sec-
4 retary has made or failed to make a compliance determina-
5 tion under section 203(a) that has adversely affected the
6 person seeking the review. An action for review may only
7 be brought in the United States District Court for the Dis-
8 trict of Columbia. In an action seeking review of such de-
9 termination the person seeking review—

10 (1) shall have the burden of demonstrating the
11 actual reduction of the manufacturer’s child tobacco
12 use level; and

13 (2) may prevail only to the extent that the per-
14 son demonstrates that such reduction is different
15 than the reduction the Secretary used in making
16 such determination.

17 (b) NO STAY.—Section 705 of title 5, United States
18 Code, shall not apply with respect to any action under sub-
19 section (a).

20 (c) INTEREST.—If the judgment of a court in an ac-
21 tion under subsection (a) results in the reduction of a pay-
22 ment paid by a manufacturer under section 204, the man-
23 ufacturer shall be paid from the account referred to in
24 such section an amount equal to the amount of such re-
25 duction and interest on such amount. If the judgment of
26 a court in an action under subsection (a) results in the

1 increase in the amount to be paid by a manufacturer
2 under section 204, the manufacturer shall pay to such ac-
3 count an amount equal to the amount of such increase
4 and interest on such amount.

5 **SEC. 206. GENERAL PROVISIONS.**

6 (a) ENFORCEMENT.—Section 301 of the Federal
7 Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amend-
8 ed by adding at the end the following:

9 “(cc) The failure to comply with a requirement under
10 section 203, 204, 205, or 206 of the Child Tobacco Use
11 Prevention Act of 2001.”

12 (b) REGULATIONS.—

13 (1) GENERAL RULE.—The Secretary may pro-
14 mulgate regulations for the implementation of this
15 title.

16 (2) ADDITIONAL AUTHORITY.—For products
17 (other than cigarettes and smokeless tobacco) made
18 or derived from tobacco that are intended for human
19 consumption the Secretary may by regulation estab-
20 lish performance objectives under section 202 relat-
21 ing to the use of such products by children and may
22 require additional measures under section 203 for
23 failure to achieve the objectives.

24 (c) ADMINISTRATION OF SURVEYS.—

1 (1) STATISTICAL ACCURACY OF SURVEYS.—The
2 annual performance surveys conducted by the Sec-
3 retary under section 201(a) shall be designed so that
4 if a manufacturer had a child tobacco use level that
5 is equal to 50 percent, the 95 percent confidence in-
6 terval would be no greater than plus or minus 1 per-
7 centage point.

8 (2) SURVEY CONDITIONS.—The annual per-
9 formance surveys shall—

10 (A) be household-based surveys; and

11 (B) not be subject to State or local regula-
12 tion or chapter 35 of title 44, United States
13 Code.

14 (3) CONFIDENTIALITY.—The Secretary shall
15 not disclose information that may identify a child
16 surveyed in an annual performance survey unless the
17 child (or the child’s parent or guardian) has con-
18 sented to such disclosure.

19 (4) TECHNICAL ADJUSTMENTS.—The Secretary
20 may make technical adjustments in the manner in
21 which annual performance surveys are conducted if
22 adjustments are made to insure that the results of
23 the surveys are comparable from year to year.

1 **SEC. 207. USE OF TOBACCO PRODUCTS AMONG MINORITY**
2 **POPULATIONS.**

3 As part of each annual survey, the Secretary shall
4 determine the child tobacco use level for children of dif-
5 ferent racial and ethnic backgrounds. If the Secretary de-
6 termines that the child tobacco use level is increasing, or
7 is not decreasing at a proportionate rate, among children
8 of a racial or ethnic background, the Secretary shall report
9 such determination to Congress along with recommenda-
10 tions for reducing such level for children of such racial
11 or ethnic background.

12 **SEC. 208. DEFINITIONS.**

13 For purposes of this title:

14 (1) **ANNUAL PERFORMANCE SURVEY.**—The
15 term “annual performance survey” means a survey
16 conducted by the Secretary annually under section
17 201.

18 (2) **CHILDREN.**—The term “children” means
19 individuals under the age of 18 and above the age
20 of 11 who are residents of the United States.

21 (3) **CHILD TOBACCO USE LEVEL.**—The term
22 “child tobacco use level” means, with respect to a
23 manufacturer and an annual performance survey,
24 the percentage of children who use the manufactur-
25 er’s tobacco products as determined in an annual
26 performance survey or under section 205(a)

1 (4) EXISTING MANUFACTURER.—The term “ex-
2 isting manufacturer” means a manufacturer which
3 manufactured or imported a tobacco product on or
4 before the date of the enactment of this Act.

5 (5) MANUFACTURER.—The term “manufac-
6 turer” means any person who manufactures or im-
7 ports a tobacco product.

8 (6) NEW MANUFACTURER.—The term “new
9 manufacturer” means any manufacturer other than
10 an existing manufacturer.

11 (7) SECRETARY.—The term “Secretary” means
12 the Secretary of Health and Human Services.

13 (8) TOBACCO PRODUCT.—The term “tobacco
14 product” means a cigarette or smokeless tobacco.

15 (9) UNIT.—The term “unit” means 20 ciga-
16 rettes in the case of cigarettes and a comparable
17 amount as determined by the Secretary in the case
18 of smokeless tobacco.

19 (10) USE.—A child shall be considered to use
20 a manufacturer’s tobacco product if the manufactur-
21 er’s tobacco product is the usual brand of tobacco
22 product used by the child in the last 30 days.

1 **TITLE III—SMOKE-FREE**
2 **ENVIRONMENTS**

3 **SEC. 301. SMOKE-FREE ENVIRONMENT POLICY.**

4 (a) **POLICY REQUIRED.**—In order to protect children
5 and adults from cancer, respiratory disease, heart disease,
6 and other adverse health effects from breathing environ-
7 mental tobacco smoke, the responsible entity for each pub-
8 lic facility shall adopt and implement at such facility a
9 smoke-free environment policy which meets the require-
10 ments of subsection (b).

11 (b) **ELEMENTS OF POLICY.**—Each smoke-free envi-
12 ronment policy for a public facility shall—

13 (1) prohibit the smoking of cigarettes, cigars,
14 and pipes, and any other combustion of tobacco,
15 within the facility and on facility property within the
16 immediate vicinity of the entrance to the facility;
17 and

18 (2) post a clear and prominent notice of the
19 smoking prohibition in appropriate and visible loca-
20 tions at the public facility.

21 The policy may provide an exception to the prohibition
22 specified in paragraph (1) for one or more specially des-
23 ignated smoking areas within a public facility if such area
24 or areas meet the requirements of subsection (c).

1 (c) SPECIALLY DESIGNATED SMOKING AREAS.—A
2 specially designated smoking area meets the requirements
3 of this subsection if it satisfies each of the following condi-
4 tions:

5 (1) The area is ventilated in accordance with
6 specifications promulgated by the Administrator that
7 insure that air from the area is directly exhausted
8 to the outside and does not recirculate or drift to
9 other areas within the public facility.

10 (2) Nonsmoking individuals do not have to
11 enter the area for any purpose while smoking is oc-
12 ccurring.

13 (3) Children are prohibited from entering the
14 area.

15 **SEC. 302. CITIZEN ACTIONS.**

16 (a) IN GENERAL.—An action may be brought to en-
17 force the requirements of this title by any aggrieved per-
18 son, any State or local government agency, or the Admin-
19 istrator.

20 (b) VENUE.—Any action to enforce this title may be
21 brought in any district court of the United States for the
22 district in which the defendant resides or is doing business
23 to enjoin any violation of this title or to impose a civil
24 penalty for any such violation in the amount of not more
25 than \$5,000 per day of violation. The district courts shall

1 have jurisdiction, without regard to the amount in con-
2 troversy or the citizenship of the parties, to enforce this
3 title and to impose civil penalties under this title.

4 (c) NOTICE.—An aggrieved person shall give any al-
5 leged violator notice of at least 60 days prior to com-
6 mencing an action under this section. No action may be
7 commenced by an aggrieved person under this section if
8 such alleged violator complies with the requirements of
9 this title within such 60-day period and thereafter.

10 (d) COSTS.—The court, in issuing any final order in
11 any action brought pursuant to this section, may award
12 costs of litigation (including reasonable attorney and ex-
13 pert witness fees) to any prevailing party, whenever the
14 court determines such award is appropriate.

15 (e) PENALTIES.—The court in any action under this
16 section to apply civil penalties shall have discretion to
17 order that such civil penalties be used for projects which
18 further the policies of this title. The court shall obtain the
19 view of the Administrator in exercising such discretion and
20 selecting any such projects.

21 (f) DAMAGES.—No damages of any kind, whether
22 compensatory or punitive, shall be awarded in actions
23 brought pursuant to this title.

24 (g) ISOLATED INCIDENTS.—Violations of the prohibi-
25 tion specified in section 301(b)(1) by an individual within

1 a facility or on facility property shall not be considered
2 violations of this title on the part of the responsible entity
3 if such violations—

4 (1) are isolated incidents that are not part of
5 a pattern of violations of such prohibition; and

6 (2) are not authorized by the responsible entity.

7 **SEC. 303. REGULATIONS.**

8 (a) IN GENERAL.—The Administrator is authorized
9 to promulgate such regulations as the Administrator
10 deems necessary to carry out this title.

11 (b) OTHER FACILITIES.—The Administrator may by
12 regulation extend the requirement of section 301 to adopt
13 and implement a smoke-free environment policy to the fa-
14 cilities described in subparagraphs (B) through (E) of sec-
15 tion 304(2) if the Administrator determines that such an
16 action is appropriate to protect the public health.

17 **SEC. 304. DEFINITIONS.**

18 As used in this title:

19 (1) ADMINISTRATOR.—The term “Adminis-
20 trator” means the Administrator of the Environ-
21 mental Protection Agency.

22 (2) PUBLIC FACILITY.—The term “public facil-
23 ity” means any building in which activities substan-
24 tially affecting interstate commerce occur, including
25 any such building owned by or leased to a Federal,

1 State, or local government entity. Such term shall
2 not include—

3 (A) any portion of a building regularly
4 used for residential purposes;

5 (B) any commercial establishment engaged
6 primarily in the sale of alcoholic beverages for
7 consumption on the premises;

8 (C) any private club while in use for social
9 or fraternal activities that are not open to the
10 public;

11 (D) any jail or other prison facility; and

12 (E) any commercial establishment pri-
13 marily engaged in the sale of tobacco and to-
14 bacco related products.

15 (3) RESPONSIBLE ENTITY.—The term “respon-
16 sible entity” means, with respect to any facility, the
17 owner of such facility, except that in the case of any
18 such facility or portion thereof which is leased, such
19 term means the lessee.

20 **SEC. 305. PREEMPTION.**

21 Nothing in this title shall preempt or otherwise affect
22 any other Federal, State or local law which provides pro-
23 tection from health hazards from environmental tobacco
24 smoke.

1 **SEC. 306. EFFECTIVE DATE.**

2 The requirements of this title shall take effect on the
3 date one year after the date of the enactment of this Act.

4 **TITLE IV—TOBACCO**
5 **PREVENTION INITIATIVES**

6 **SEC. 401. NATIONAL PUBLIC AWARENESS CAMPAIGN.**

7 There shall be made available to the Secretary, with-
8 out fiscal year limitation, \$500,000,000 for a national
9 public awareness campaign to discourage the use of to-
10 bacco products.

11 **SEC. 402. FEDERAL IMPLEMENTATION.**

12 There shall be made available to the Secretary, with-
13 out fiscal year limitation, \$300,000,000 for the implemen-
14 tation and enforcement of—

15 (1) the provisions of the Federal Food, Drug,
16 and Cosmetic Act relating to tobacco products; and

17 (2) the requirements of title III.

18 **SEC. 403. MINORITY POPULATIONS.**

19 The Secretary shall ensure that the national public
20 awareness campaign funded under section 401 take into
21 account the needs of minority populations and are age ap-
22 propriate, culturally appropriate, and linguistically appro-
23 priate for such populations.

24 **SEC. 406. INFLATION ADJUSTMENT.**

25 Each of the amounts made available to the Secretary
26 under sections 401 and 402 shall be increased by the per-

1 centage increase in the Consumer Price Index for all
2 urban consumers (all items, U.S. city average) from 2001
3 to the year before the year in which such amount is made
4 available.

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