

105TH CONGRESS
1ST SESSION

S. 828

To provide for the reduction in the number of children who use tobacco products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 3, 1997

Mr. DURBIN (for himself and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for the reduction in the number of children who use 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.**

4 This Act may be cited as the “NO Tobacco for Kids
5 Act”.

6 **SEC. 2. CHILD TOBACCO USE SURVEYS.**

7 (a) ANNUAL PERFORMANCE SURVEY.—Not later
8 than 1 year after the date of the enactment of this Act
9 and annually thereafter the Secretary shall conduct a sur-

1 vey to determine the number of children who used each
 2 manufacturer's tobacco products within the past 30 days.

3 (b) **BASELINE LEVEL.**—The baseline level of child to-
 4 bacco product use of a manufacturer is the number of chil-
 5 dren determined to have used the tobacco products of such
 6 manufacturer in the first annual performance survey.

7 **SEC. 3. GRADUATED PERFORMANCE STANDARDS.**

8 (a) **PERFORMANCE STANDARDS FOR EXISTING MAN-**
 9 **UFACTURERS.**—Each manufacturer which manufactured a
 10 tobacco product on or before the date of the enactment
 11 of this Act shall reduce the number of children who use
 12 its tobacco products so that the number of children deter-
 13 mined to have used its tobacco products on the basis of—

14 (1) the second annual performance survey is
 15 equal to or less than—

16 (A) 80 percent of the manufacturer's base-
 17 line level; or

18 (B) the de minimis level;

19 whichever is greater;

20 (2) the third annual performance survey is
 21 equal to or less than—

22 (A) 60 percent of the manufacturer's base-
 23 line level; or

24 (B) the de minimis level;

25 whichever is greater;

1 (3) the fourth annual performance survey is
2 equal to or less than—

3 (A) 40 percent of the manufacturer's base-
4 line level; or

5 (B) the de minimis level;

6 whichever is greater;

7 (4) the fifth annual performance survey is equal
8 to or less than—

9 (A) 20 percent of the manufacturer's base-
10 line level; or

11 (B) the de minimis level;

12 whichever is greater; and

13 (5) the sixth annual performance survey and
14 each annual performance survey conducted there-
15 after is equal to or less than—

16 (A) 10 percent of the manufacturer's base-
17 line level; or

18 (B) the de minimis level;

19 whichever is greater.

20 (b) PERFORMANCE STANDARDS FOR NEW MANUFAC-
21 TURERS.—Any manufacturer of a tobacco product which
22 begins to manufacture a tobacco product after the date
23 of the enactment of this Act shall ensure that the number
24 of children determined to have used the manufacturer's
25 tobacco products in each annual performance survey con-

1 ducted after the manufacturer begins to manufacture to-
2 bacco products is equal to or less than the de minimis
3 level.

4 (c) DE MINIMIS LEVEL.—The de minimis level shall
5 be 0.5 percent of the total number of children determined
6 to have used tobacco products in the first annual perform-
7 ance survey.

8 **SEC. 4. NONCOMPLIANCE.**

9 (a) FIRST VIOLATION.—If a manufacturer of a to-
10 bacco product violates a performance standard, the manu-
11 facturer shall pay a noncompliance fee of \$1 for each unit
12 of its tobacco product which is distributed for consumer
13 use in the year following the year in which the perform-
14 ance standard is violated.

15 (b) FEE INCREASE FOR SUBSEQUENT VIOLA-
16 TIONS.—If a manufacturer violates the performance
17 standards in 2 or more consecutive years, the noncompli-
18 ance fee for such manufacturer shall be increased by \$1
19 for each consecutive violation for each unit of its tobacco
20 product which is distributed for consumer use.

21 (c) REDUCTION IN NONCOMPLIANCE FEE.—If a
22 manufacturer achieves more than 90 percent of the reduc-
23 tion in the number of children who use its tobacco prod-
24 ucts that is required under the applicable performance
25 standard, the noncompliance fee required to be paid by

1 the manufacturer shall be reduced on a pro rata basis such
2 that there shall be a noncompliance fee reduction of 10
3 percent for each percentage point over 90 percent achieved
4 by the manufacturer.

5 (d) PAYMENT.—The noncompliance fee to be paid by
6 a manufacturer shall be paid on a quarterly basis, with
7 the payments due within 30 days after the end of each
8 calendar quarter.

9 **SEC. 5. USE OF NONCOMPLIANCE FEE.**

10 (a) FUNDS FOR ENFORCEMENT AND EDUCATION.—
11 The first \$1,000,000,000 of noncompliance fees collected
12 in any fiscal year shall go into a Tobacco Enforcement
13 and Education Fund in the United States Treasury. Fees
14 in such fund shall be available to the Secretary, without
15 fiscal year limitation, to enforce this Act and other Fed-
16 eral laws relating to tobacco use by children and for public
17 education to discourage children from using tobacco prod-
18 ucts.

19 (b) FUNDS FOR THE TREASURY.—Any amount of
20 noncompliance fees collected in any fiscal year which ex-
21 ceeds \$1,000,000,000 shall be paid into the United States
22 Treasury.

23 **SEC. 6. JUDICIAL REVIEW.**

24 A manufacturer of tobacco products may seek judicial
25 review of any action under this Act only after a noncompli-

1 ance fee has been assessed and paid by the manufacturer
2 and only in the United States District Court for the Dis-
3 trict of Columbia. In an action by a manufacturer seeking
4 judicial review of an annual performance survey, the man-
5 ufacturer may prevail—

6 (1) only if the manufacturer shows that the re-
7 sults of the performance survey were arbitrary and
8 capricious; and

9 (2) only to the extent that the manufacturer
10 shows that it would have been required to pay a less-
11 er noncompliance fee if the results of the perform-
12 ance survey were not arbitrary and capricious.

13 **SEC. 7. ENFORCEMENT.**

14 Section 301 of the Federal Food, Drug, and Cosmetic
15 Act (28 U.S.C. 331) is amended by adding at the end the
16 following:

17 “(x) The failure to pay any noncompliance fee re-
18 quired under the NO Tobacco for Kids Act.”.

19 **SEC. 8. PREEMPTION.**

20 Nothing in this Act shall preempt or otherwise affect
21 any other Federal, State, or local law or regulation which
22 reduces the use of tobacco products by children.

23 **SEC. 9. DEFINITIONS.**

24 In this Act:

1 (1) CHILDREN.—The term “children” means
2 individuals under the age of 18.

3 (2) CIGARETTE.—The term “cigarette” has the
4 same meaning given such term by section 3(1) of the
5 Federal Cigarette Labeling and Advertising Act (15
6 U.S.C. 1332(1)).

7 (3) CIGARETTE TOBACCO.—The term “cigarette
8 tobacco” means any product that consists of loose
9 tobacco that contains or delivers nicotine and is in-
10 tended for use by consumers in a cigarette.

11 (4) MANUFACTURE.—The term “manufacture”
12 means the manufacturing, including repacking or re-
13 labeling, fabrication, assembly, processing, labeling,
14 or importing of a tobacco product.

15 (4) MANUFACTURER.—The term “manufac-
16 turer” means any person who manufactures a to-
17 bacco product.

18 (5) SECRETARY.—The term “Secretary” means
19 the Secretary of Health and Human Services.

20 (6) SMOKELESS TOBACCO.—The term “smoke-
21 less tobacco” has the same meaning given such term
22 by section 9(1) of the Comprehensive Smokeless To-
23 bacco Education Act of 1986 (15 U.S.C. 4408(1)).

1 (7) TOBACCO PRODUCT.—The term “tobacco
2 product” means a cigarette, cigarette tobacco, or
3 smokeless tobacco.

4 (8) UNIT.—The term “unit” when used in con-
5 nection with a tobacco product means 20 cigarettes
6 in the case of cigarettes and the smallest amount of
7 tobacco distributed by a manufacturer for consumer
8 use in the case of any other tobacco product.

○