

103D CONGRESS  
1ST SESSION

# S. 261

To protect children from exposure to environmental tobacco smoke in the provision of children's services, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 28 (legislative day, JANUARY 5), 1993

Mr. LAUTENBERG (for himself and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To protect children from exposure to environmental tobacco smoke in the provision of children's services, 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 "Preventing Our Kids  
5 From Inhaling Deadly Smoke (PRO-KIDS) Act of 1993".

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) environmental tobacco smoke comes from  
9 secondhand smoke exhaled by smokers and

1 sidestream smoke emitted from the burning of ciga-  
2 rettes, cigars, and pipes;

3 (2) since citizens of the United States spend up  
4 to 90 percent of a day indoors, there is a significant  
5 potential for exposure to environmental tobacco  
6 smoke from indoor air;

7 (3) exposure to environmental tobacco smoke  
8 occurs in schools, public buildings, and other indoor  
9 facilities;

10 (4) recent scientific studies have concluded that  
11 exposure to environmental tobacco smoke is a cause  
12 of lung cancer in healthy nonsmokers and is respon-  
13 sible for acute and chronic respiratory problems and  
14 other health impacts in sensitive populations (includ-  
15 ing children);

16 (5) the health risks posed by environmental to-  
17 bacco smoke exceed the risks posed by many envi-  
18 ronmental pollutants regulated by the Environ-  
19 mental Protection Agency; and

20 (6) according to information released by the  
21 Environmental Protection Agency, environmental to-  
22 bacco smoke results in a loss to the economy of over  
23 \$3,000,000,000 per year.

24 **SEC. 3. DEFINITIONS.**

25 As used in this Act:

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

4           (2) CHILDREN.—The term “children” means  
5           individuals who have not attained the age of 18.

6           (3) CHILDREN’S SERVICES.—The term “chil-  
7           dren’s services” means—

8                   (A)(i) direct health services routinely pro-  
9                   vided to children; or

10                   (ii) any other direct services routinely pro-  
11                   vided primarily to children, including edu-  
12                   cational services; and

13                   (B) that are funded (in whole or in part)  
14                   by Federal funds.

15           (4) SECRETARY.—The term “Secretary” means  
16           the Secretary of Health and Human Services.

17 **SEC. 4. NONSMOKING POLICY FOR CHILDREN’S SERVICES.**

18           (a) ISSUANCE OF GUIDELINES.—Not later than 180  
19           days after the date of enactment of this Act, the Adminis-  
20           trator shall issue guidelines for instituting and enforcing  
21           a nonsmoking policy at each indoor facility where chil-  
22           dren’s services are provided.

23           (b) CONTENTS OF GUIDELINES.—A nonsmoking pol-  
24           icy that meets the requirements of the guidelines shall,  
25           at a minimum, prohibit smoking in each portion of an in-

1 door facility where children's services are provided that is  
2 not ventilated separately (as defined by the Administrator)  
3 from other portions of the facility.

4 **SEC. 5. TECHNICAL ASSISTANCE AND OUTREACH ACTIVI-**  
5 **TIES.**

6 (a) TECHNICAL ASSISTANCE.—The Administrator  
7 and the Secretary shall provide technical assistance to per-  
8 sons who provide children's services and other persons who  
9 request technical assistance. The technical assistance shall  
10 include information—

11 (1) on smoking cessation programs for employ-  
12 ees; and

13 (2) to assist in compliance with the require-  
14 ments of this Act.

15 **SEC. 6. FEDERALLY FUNDED PROGRAMS.**

16 (a) IN GENERAL.—Notwithstanding any other provi-  
17 sion of law, each person who provides children's services  
18 shall establish and make a good-faith effort to enforce a  
19 nonsmoking policy that meets or exceeds the requirements  
20 of subsection (b).

21 (b) NONSMOKING POLICY.—

22 (1) GENERAL REQUIREMENTS.—A nonsmoking  
23 policy meets the requirements of this subsection if  
24 the policy—

1 (A) is consistent with the guidelines issued  
2 under section 4(a);

3 (B) prohibits smoking in each portion of  
4 an indoor facility used in connection with the  
5 provision of services directly to children; and

6 (C) where appropriate, requires that signs  
7 stating that smoking is not permitted be posted  
8 in each indoor facility to communicate the  
9 policy.

10 (2) PERMISSIBLE FEATURES.—A nonsmoking  
11 policy that meets the requirements of this subsection  
12 may allow smoking in those portions of the facility—

13 (A) in which services are not normally pro-  
14 vided directly to children; and

15 (B) that are ventilated separately from  
16 those portions of the facility in which services  
17 are normally provided directly to children.

18 (c) WAIVER.—

19 (1) IN GENERAL.—A person described in sub-  
20 section (a) may publicly petition the head of the  
21 Federal agency from which the person receives Fed-  
22 eral funds (including financial assistance) for a  
23 waiver from any or all of the requirements of sub-  
24 section (b).

1           (2) CONDITIONS FOR GRANTING A WAIVER.—  
2       Except as provided in paragraph (3), the head of the  
3       Federal agency may grant a waiver only—

4           (A) after consulting with the Adminis-  
5           trator, and receiving the concurrence of the  
6           Administrator;

7           (B) after giving an opportunity for public  
8           hearing (at the main office of the Federal agen-  
9           cy or at any regional office of the agency) and  
10          comment; and

11          (C) if the person requesting the waiver  
12          provides assurances that are satisfactory to the  
13          head of the Federal agency (with the concur-  
14          rence of the Administrator) that—

15           (i) unusual extenuating circumstances  
16           prevent the person from establishing or en-  
17           forcing the nonsmoking policy (or a re-  
18           quirement under the policy) referred to in  
19           subsection (b) (including a case in which  
20           the person shares space in an indoor facil-  
21           ity with another entity and cannot obtain  
22           an agreement with the other entity to  
23           abide by the nonsmoking policy require-  
24           ment) and the person will establish and  
25           make a good-faith effort to enforce an al-

1           ternative nonsmoking policy (or alternative  
2           requirement under the policy) that will  
3           protect children from exposure to environ-  
4           mental tobacco smoke to the maximum ex-  
5           tent possible; or

6           (ii) the person requesting the waiver  
7           will establish and make a good-faith effort  
8           to enforce an alternative nonsmoking pol-  
9           icy (or alternative requirement under the  
10          policy) that will protect children from ex-  
11          posure to environmental tobacco smoke to  
12          the same degree as the policy (or require-  
13          ment) under subsection (b).

14          (3) SPECIAL WAIVER.—

15           (A) IN GENERAL.—On receipt of an appli-  
16          cation, the head of the Federal agency may  
17          grant a special waiver to a person described in  
18          subsection (a) who employs individuals who are  
19          members of a labor organization and provide  
20          children’s services pursuant to a collective bar-  
21          gaining agreement that—

22           (i) took effect before the date of en-  
23          actment of this Act; and

1 (ii) includes provisions relating to  
2 smoking privileges that are in violation of  
3 the requirements of this section.

4 (B) TERMINATION OF WAIVER.—A special  
5 waiver granted under this paragraph shall ter-  
6minate on the earlier of—

7 (i) the first expiration date (after the  
8 date of enactment of this Act) of the col-  
9 lective bargaining agreement containing  
10 the provisions relating to smoking privi-  
11 leges; or

12 (ii) the date that is 1 year after the  
13 date specified in subsection (f).

14 (d) CIVIL PENALTIES.—

15 (1) IN GENERAL.—(A) Any person subject to  
16 the requirements of this section who fails to comply  
17 with the requirements shall be liable to the United  
18 States for a civil penalty in an amount not to exceed  
19 \$1,000 for each violation, but in no case shall the  
20 amount be in excess of the amount of Federal funds  
21 received by the person for the fiscal year in which  
22 the violation occurred for the provision of children's  
23 services.

24 (B) Each day a violation continues shall con-  
25 stitute a separate violation.

1           (2) ASSESSMENT.—A civil penalty for a viola-  
2           tion of this section shall be assessed by the head of  
3           the Federal agency that provided Federal funds (in-  
4           cluding financial assistance) to the person (or if the  
5           head of the Federal agency does not have the au-  
6           thority to issue an order, the appropriate official) by  
7           an order made on the record after opportunity for  
8           a hearing in accordance with section 554 of title 5,  
9           United States Code. Before issuing the order, the  
10          head of the Federal agency (or the appropriate offi-  
11          cial) shall—

12                   (A) give written notice to the person to be  
13                   assessed a civil penalty under the order of the  
14                   proposal to issue the order; and

15                   (B) provide the person an opportunity to  
16                   request, not later than 15 days after the date  
17                   of receipt of the notice, a hearing on the order.

18          (3) AMOUNT OF CIVIL PENALTY.—In determin-  
19          ing the amount of a civil penalty under this sub-  
20          section, the head of the Federal agency (or the ap-  
21          propriate official) shall take into account—

22                   (A) the nature, circumstances, extent, and  
23                   gravity of the violation;

24                   (B) with respect to the violator, the ability  
25                   to pay, the effect of the penalty on the ability

1 to continue operation, any prior history of the  
2 same kind of violation, the degree of culpability,  
3 and a demonstration of willingness to comply  
4 with the requirements of this Act; and

5 (C) such other matters as justice may  
6 require.

7 (4) MODIFICATION.—The head of the Federal  
8 agency (or the appropriate official) may compromise,  
9 modify, or remit, with or without conditions, any  
10 civil penalty that may be imposed under this sub-  
11 section. The amount of the penalty as finally deter-  
12 mined or agreed upon in compromise may be de-  
13 ducted from any sums that the United States owes  
14 to the person against whom the penalty is assessed.

15 (5) PETITION FOR REVIEW.—A person who has  
16 requested a hearing concerning the assessment of a  
17 penalty pursuant to paragraph (2) and is aggrieved  
18 by an order assessing a civil penalty may file a peti-  
19 tion for judicial review of the order with the United  
20 States Court of Appeals for the District of Columbia  
21 Circuit or for any other circuit in which the person  
22 resides or transacts business. The petition may only  
23 be filed during the 30-day period beginning on the  
24 date of issuance of the order making the assessment.

1           (6) FAILURE TO PAY.—If a person fails to pay  
2           an assessment of a civil penalty—

3                   (A) after the order making the assessment  
4                   has become a final order and without filing a  
5                   petition for judicial review in accordance with  
6                   paragraph (5); or

7                   (B) after a court has entered a final judg-  
8                   ment in favor of the head of the Federal agency  
9                   (or appropriate official),

10           the Attorney General shall recover the amount as-  
11           sessed (plus interest at currently prevailing rates  
12           from the last day of the 30-day period referred to  
13           in paragraph (5) or the date of the final judgment,  
14           as the case may be) in an action brought in an ap-  
15           propriate district court of the United States. In the  
16           action, the validity, amount, and appropriateness of  
17           the penalty shall not be subject to review.

18           (e) EXEMPTION.—This section shall not apply to a  
19           person who provides children’s services who—

20                   (1) has attained the age of 18;

21                   (2) provides children’s services—

22                           (A) in a private residence; and

23                           (B) only to children who are, by affinity or  
24                   consanguinity, or by court decree, a grandchild,  
25                   niece, or nephew of the provider; and

1           (3) is registered and complies with any State  
2 requirements that govern the children's services pro-  
3 vided.

4           (f) EFFECTIVE DATE.—This section shall take effect  
5 on the first day of the first fiscal year beginning after the  
6 date of enactment of this Act.

7 **SEC. 7. REPORT BY THE ADMINISTRATOR.**

8           Not later than 2 years after the date of enactment  
9 of this Act, the Administrator shall submit a report to  
10 Congress that includes—

11           (1) information concerning the degree of com-  
12 pliance with this Act; and

13           (2) an assessment of the legal status of smok-  
14 ing in public places.

15 **SEC. 8. PREEMPTION.**

16           Nothing in this Act is intended to preempt any provi-  
17 sion of law of a State or political subdivision of a State  
18 that is more restrictive than a provision of this Act.

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