

103^D CONGRESS
1ST SESSION

S. 262

To require the Administrator of the Environmental Protection Agency to promulgate guidelines for instituting a nonsmoking policy in buildings owned or leased by Federal agencies, and for other purposes.

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 Environment and Public Works

A BILL

To require the Administrator of the Environmental Protection Agency to promulgate guidelines for instituting a nonsmoking policy in buildings owned or leased by Federal agencies, 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 Fed-
5 eral Building Workers and Visitors From Exposure to
6 Deadly Smoke (PRO-FEDS) Act of 1993”.

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

1 (1) environmental tobacco smoke comes from
2 secondhand smoke exhaled by smokers and
3 sidestream smoke emitted from the burning of ciga-
4 rettes, cigars, and pipes;

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

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

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

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

22 (6) according to information released by the
23 Environmental Protection Agency, environmental to-
24 bacco smoke results in a loss to the economy of over
25 \$3,000,000,000 per year.

1 **SEC. 3. DEFINITIONS.**

2 As used in this Act:

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

6 (2) EXECUTIVE AGENCY.—The term “Executive
7 agency” has the meaning provided in section 105 of
8 title 5, United States Code.

9 (3) FEDERAL AGENCY.—The term “Federal
10 agency” includes any Executive agency, the Execu-
11 tive Office of the President, any military depart-
12 ment, any court of the United States, the Adminis-
13 trative Office of the United States Courts, the Li-
14 brary of Congress, the Botanic Garden, the Govern-
15 ment Printing Office, the Congressional Budget Of-
16 fice, the United States Postal Service, the Postal
17 Rate Commission, the Office of the Architect of the
18 Capitol, the Office of Technology Assessment, and
19 any other agency of the executive, legislative, and ju-
20 dicial branches.

21 (4) FEDERAL BUILDING.—The term “Federal
22 building” means any building or other structure
23 owned or leased for use by a Federal agency, except
24 that the term shall not include any area of a build-
25 ing that is used primarily as living quarters.

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

3 **SEC. 4. NONSMOKING POLICY FOR FEDERAL BUILDINGS.**

4 (a) IN GENERAL.—

5 (1) ISSUANCE OF GUIDELINES.—Not later than
6 180 days after the date of enactment of this Act, the
7 Administrator shall issue guidelines for instituting
8 and enforcing a nonsmoking policy at each Federal
9 agency.

10 (2) CONTENTS OF GUIDELINES.—A non-
11 smoking policy that meets the requirements of the
12 guidelines shall, at a minimum, prohibit smoking in
13 each indoor portion of a Federal building that is not
14 ventilated separately (as defined by the Adminis-
15 trator) from other portions of the facility.

16 (b) ADOPTION OF GUIDELINES.—

17 (1) IN GENERAL.—As soon as is practicable
18 after the date of issuance of the guidelines referred
19 to in subsection (a), the head of each Executive
20 agency, and the Director of the Administrative Of-
21 fice of the United States Courts shall adopt a non-
22 smoking policy applicable to the Federal agency
23 under the jurisdiction of the individual that meets
24 the requirements of the guidelines referred to in sub-
25 section (a), and take such action as is necessary to

1 ensure that the policy is carried out in the manner
2 specified in the guidelines.

3 (2) LEGISLATIVE BRANCH.—As soon as is prac-
4 ticable after the date of issuance of the guidelines
5 referred to in subsection (a), the following entities
6 and individuals shall adopt a nonsmoking policy that
7 meets the requirements of the guidelines referred to
8 in subsection (a), and take such action as is nec-
9 essary to ensure that the policy is carried out in the
10 manner specified in the guidelines:

11 (A) With respect to the House of Rep-
12 resentatives (including any office space or build-
13 ings of the House of Representatives), the
14 House Office Building Commission.

15 (B) With respect to the Senate (including
16 any office space or buildings of the Senate), the
17 Committee on Rules and Administration of the
18 Senate.

19 (C) With respect to any other area occu-
20 pied or used by a Federal agency of the legisla-
21 tive branch, the Architect of the Capitol.

22 (3) CERTIFICATION FOR EXECUTIVE AGEN-
23 CIES.—The Administrator of General Services, in
24 consultation with the Administrator, shall review
25 each nonsmoking policy adopted by the head of an

1 Executive agency and shall certify those policies that
2 meet the requirements of the guidelines referred to
3 in subsection (a). In carrying out the certification,
4 the Administrator of General Services shall use a
5 procedure and apply criteria that the Administrator
6 shall establish. Except as provided in subsection (c),
7 if a policy does not meet the requirements of the
8 guidelines, the Administrator of General Services
9 shall—

10 (A) in a written communication, advise the
11 head of the Executive agency concerning modi-
12 fications of the policy to meet the requirements;
13 and

14 (B) publish the communication in the Fed-
15 eral Register.

16 (c) WAIVERS.—

17 (1) EXECUTIVE AGENCIES.—The head of an
18 Executive agency may publicly petition the Adminis-
19 trator of General Services for a waiver from institut-
20 ing or enforcing a nonsmoking policy (or policy re-
21 quirement) under the guidelines issued pursuant to
22 subsection (a). The Administrator of General Serv-
23 ices may waive the requirement if, after consultation
24 with the Administrator, the Administrator of Gen-
25 eral Services determines that—

1 (A) unusual extenuating circumstances
2 prevent the head of the Federal agency from
3 enforcing the policy (or a requirement under
4 the policy) (including a case in which the Fed-
5 eral agency shares space in an indoor facility
6 with a non-Federal entity and cannot obtain an
7 agreement with the other entity to abide by the
8 nonsmoking policy requirement) and the head
9 of the Executive agency will establish and make
10 a good-faith effort to enforce an alternative
11 nonsmoking policy (or alternative requirement
12 under the policy) that will protect individuals
13 from exposure to environmental tobacco smoke
14 to the maximum extent possible; or

15 (B) the head of the Executive agency will
16 enforce an alternative nonsmoking policy (or al-
17 ternative requirement under the policy) that
18 will protect individuals from exposure to envi-
19 ronmental tobacco smoke to the same degree as
20 the requirement under the guidelines issued
21 pursuant to subsection (a).

22 (2) AGENCIES OF THE JUDICIAL BRANCH.—
23 After consultation with the Administrator, and after
24 providing public notice and reasonable opportunity
25 for public review and comment, the Director of the

1 Administrative Office of the United States Courts
2 may, on the basis of the criteria for a waiver re-
3 ferred to in paragraph (1), make such modifications
4 to the nonsmoking policy required to be carried out
5 pursuant to subsection (b) as the Director deter-
6 mines to be necessary. The Director may not make
7 any modification that violates the criteria for a waiv-
8 er under paragraph (1).

9 (3) AGENCIES OF THE LEGISLATIVE BRANCH.—
10 After consultation with the Administrator, and after
11 providing public notice and reasonable opportunity
12 for public review and comment, the appropriate en-
13 tity or individual referred to in subparagraphs (A)
14 through (C) of subsection (b)(2) may, on the basis
15 of the criteria for a waiver referred to in paragraph
16 (1), make such modifications to the nonsmoking pol-
17 icy required to be carried out pursuant to subsection
18 (b) as the entity or individual determines to be nec-
19 essary. The entity or individual may not make any
20 modification that violates the criteria for a waiver
21 under paragraph (1).

22 (d) COLLECTIVE BARGAINING AGREEMENTS.—

23 (1) IN GENERAL.—In a Federal agency in
24 which a labor organization has been accorded rec-
25 ognition as a bargaining unit pursuant to chapter 71

1 of title 5, United States Code, the Federal agency
2 shall engage in collective bargaining pursuant to sec-
3 tion 7114 of title 5, United States Code, to ensure
4 the implementation of the requirements of this sec-
5 tion that affect work areas predominately occupied
6 by the employees represented by the labor organiza-
7 tion by the date of the adoption, pursuant to this
8 section, of a nonsmoking policy applicable to the
9 Federal agency.

10 (2) EXEMPTION.—

11 (A) IN GENERAL.—If, on the date of en-
12 actment of this Act—

13 (i) a bargaining unit referred to in
14 paragraph (1) has in effect a collective
15 bargaining agreement with respect to
16 which a Federal agency is a party; and

17 (ii) the collective bargaining agree-
18 ment referred to in clause (i) includes pro-
19 visions relating to smoking privileges that
20 are in violation of the requirements of this
21 section,

22 the head of the Federal agency may exempt
23 work areas predominately occupied by the em-
24 ployees subject to the collective bargaining
25 agreement from the nonsmoking policy that the

1 Federal agency is required to be carried out
2 under subsection (b).

3 (B) TERMINATION OF EXEMPTION.—

4 (i) IN GENERAL.—An exemption re-
5 ferred to in subparagraph (A) shall termi-
6 nate on the earlier of—

7 (I) the first expiration date (after
8 the date of enactment of this Act) of
9 the collective bargaining agreement
10 containing the provisions relating to
11 smoking privileges; or

12 (II) the date that is 1 year after
13 the date of issuance of the guidelines.

14 (ii) IMPLEMENTATION OF NON-
15 SMOKING POLICY AFTER TERMINATION
16 DATE.— By the applicable date specified in
17 clause (i)(II), the head of each Federal
18 agency shall be required to enforce a non-
19 smoking policy that meets the require-
20 ments of the guidelines issued under sub-
21 section (a) in each work area under the ju-
22 risdiction of the head of the Federal agen-
23 cy, notwithstanding any collective bargain-
24 ing agreement that contains provisions

1 that are less restrictive than the non-
2 smoking policy.

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

5 (a) TECHNICAL ASSISTANCE.—The Administrator
6 and the Secretary shall provide technical assistance to the
7 heads of Federal agencies and other persons who request
8 technical assistance. The technical assistance shall include
9 information—

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

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

14 (b) OUTREACH ACTIVITIES.—

15 (1) IN GENERAL.—The Administrator, in con-
16 sultation with the Secretary, shall establish an out-
17 reach program to inform the public concerning the
18 dangers of environmental tobacco smoke. As part of
19 the outreach program, the Administrator and the
20 Secretary shall make available to the general public
21 brochures and other educational materials. In estab-
22 lishing the programs under this paragraph, the Ad-
23 ministrator and the Secretary shall cooperate to
24 maximize the sharing of information and resources.

1 (2) ENVIRONMENTAL TOBACCO SMOKE ADVI-
2 SORY OFFICE.—

3 (A) IN GENERAL.—The Administrator
4 shall establish within the Office of Radiation
5 and Indoor Air of the Environmental Protection
6 Agency an office, to be known as the “Environ-
7 mental Tobacco Smoke Advisory Office”. The
8 Administrator shall appoint a Director to carry
9 out the functions of the office.

10 (B) DUTIES OF THE DIRECTOR.—The Di-
11 rector shall—

12 (i) provide information on smoking
13 cessation;

14 (ii) provide information to assist in
15 compliance with the requirements of this
16 Act;

17 (iii) provide information on the dan-
18 gers of environmental tobacco smoke to
19 any person who requests the information;

20 (iv) establish a telephone hotline to
21 provide information on the dangers of envi-
22 ronmental tobacco smoke; and

23 (v) carry out any other function of the
24 Office that the Administrator determines
25 to be appropriate.

1 **SEC. 6. REPORT BY THE ADMINISTRATOR.**

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

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

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

9 **SEC. 7. PREEMPTION.**

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

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