

105TH CONGRESS  
1ST SESSION

# H. R. 516

To establish the Federal authority to regulate tobacco and other tobacco products containing nicotine.

---

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1997

Mr. BAESLER introduced the following bill; which was referred to the Committee on Commerce

---

## A BILL

To establish the Federal authority to regulate tobacco and other tobacco products containing nicotine.

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 “Youth Smoking Pre-  
5 vention Act of 1997”.

6 **SEC. 2. AUTHORITY TO REGULATE TOBACCO AND OTHER**  
7 **PRODUCTS CONTAINING NICOTINE.**

8 (a) FOOD AND DRUG ADMINISTRATION.—The Sec-  
9 retary of Health and Human Services does not have any  
10 authority under—

1 (1) the Federal Food, Drug, and Cosmetic Act,

2 (2) the Federal Cigarette Labeling and Adver-  
3 tising Act, or

4 (3) the Comprehensive Smokeless Tobacco  
5 Health Education Act of 1986,

6 to regulate the manufacture, labeling, sale, distribution,  
7 and advertising and promotion of tobacco and other to-  
8 bacco products containing nicotine.

9 (b) FEDERAL AUTHORITY.—The Federal authority  
10 to regulate the sale, distribution, and advertising and pro-  
11 motion of tobacco and other tobacco products containing  
12 nicotine is established as a condition to the receipt by  
13 States of the Federal preventive health and health services  
14 block grant.

15 **SEC. 3. REGULATION OF STATE AUTHORITY.**

16 (a) IN GENERAL.—Section 1926(a)(1) of the Public  
17 Health Service Act (42 U.S.C. sec. 300x-26(a)(1)) is  
18 amended to read as follows:

19 “(1) IN GENERAL.—Subject to paragraph (2),  
20 for fiscal year 1997 and subsequent fiscal years, the  
21 Secretary may make a grant under section 1921  
22 only if the State involved has in effect a law which  
23 provides the following:

24 “(A) MINORS.—

1           “(i) SALES.—It shall be unlawful to  
2           sell tobacco and other tobacco products  
3           containing nicotine to an individual under  
4           the age of 18. Tobacco and other tobacco  
5           products containing nicotine may be sold  
6           only to individuals who present a document  
7           containing the individual’s photograph and  
8           date of birth. Any person who violates this  
9           paragraph shall be fined in the amount  
10          that a person who sells alcoholic beverages  
11          to a minor is fined under State law.

12          “(ii) PURCHASE.—It shall be unlawful  
13          for an individual under the age of 18 to  
14          purchase any tobacco and other tobacco  
15          product containing nicotine. Any individual  
16          who violates this paragraph for the first  
17          time shall be fined not more than \$100, re-  
18          quired to perform community service, or  
19          required to attend education and training  
20          in the hazards of smoking. Any individual  
21          who violates this paragraph more than  
22          once shall be fined not more than \$100, re-  
23          quired to perform community service, and  
24          required to attend education and training  
25          in the hazards of smoking. Such education

1 and training shall be funded by the fines  
2 collected under this paragraph.

3 “(iii) IDENTIFICATION.—It shall be  
4 unlawful for an individual to present iden-  
5 tification for the purchase of tobacco and  
6 other tobacco products containing nicotine  
7 which is false. Any individual who violates  
8 this paragraph shall be fined not more  
9 than \$250, required to perform community  
10 service, and required to attend education  
11 and training in the hazards of smoking.

12 “(B) SALES OF SPECIFIC PRODUCTS.—It  
13 shall be unlawful to sell—

14 “(i) individual cigarettes, and

15 “(ii) packages of cigarettes which con-  
16 tain less than 20 cigarettes.

17 Any person who violates this subsection shall be  
18 fined in the amount that a person who sells al-  
19 coholic beverages to a minor is fined under  
20 State law.

21 “(C) VENDING MACHINES.—No person,  
22 firm, partnership, company, or corporation shall  
23 operate a vending machine which dispenses  
24 cigarettes or smokeless tobacco products unless  
25 such vending machine is in a location that is in

1 plain view and under the direct supervision and  
2 control of the individual in charge of the loca-  
3 tion or such individual’s designated agent or  
4 employee, except that this subparagraph shall  
5 not apply in the case of a vending machine that  
6 is located—

7 “(i) at a private club;

8 “(ii) at a bar or bar area of a food  
9 service establishment;

10 “(iii) at a factory, warehouse, tobacco  
11 business, or any other place of employment  
12 which has an insignificant portion of its  
13 regular workforce comprised of individuals  
14 under the age of 18 years and only if such  
15 machines are located in an area that is not  
16 accessible to the general public;

17 “(iv) in any place if the vending ma-  
18 chine is equipped with a device which con-  
19 trols the sale of tobacco products from the  
20 machine to individuals under the age of  
21 18; or

22 “(v) in such other location or made  
23 available in another manner that is ex-  
24 pressly permitted under applicable State  
25 law.

1           “(D) SELF-SERVICE DISPLAYS.—It shall  
2 be unlawful to make tobacco and other tobacco  
3 products containing nicotine available to indi-  
4 viduals under the age of 18 in self-service dis-  
5 plays which are not under the supervision of an  
6 individual over the age of 18. Any person who  
7 violates this subsection shall be fined in the  
8 amount that a person who sells alcoholic bev-  
9 erages to a minor is fined under State law.

10           “(E) SAMPLES.—It shall be unlawful to  
11 distribute free samples of tobacco and other to-  
12 bacco products containing nicotine to individ-  
13 uals under the age of 18 through the mail or  
14 otherwise. Any person who violates this sub-  
15 paragraph shall be fined in the amount that a  
16 person who sells alcoholic beverages to a minor  
17 is fined under State law.

18           “(F) USE OF MAIL.—It shall be unlawful  
19 to distribute tobacco and other tobacco products  
20 containing nicotine through the mail to individ-  
21 uals under the age of 18. Such tobacco prod-  
22 ucts when distributed through the mails is non-  
23 mailable matter and such distribution shall be  
24 penalized in accordance with chapter 30 of title  
25 39, United States Code.

1           “(G) GENERAL REQUIREMENTS APPLICA-  
2           BLE TO SALES.—Tobacco and other tobacco  
3           products containing nicotine which are offered  
4           for sale at retail must be in the sight and con-  
5           trol of the person responsible for making the  
6           sales. Any person offering such products for  
7           sale at retail shall post, in accordance with reg-  
8           ulations of the State, signs stating the mini-  
9           mum purchase age, stating health warnings,  
10          and stating the penalties for violations of the  
11          requirements of this paragraph. Any person  
12          who violates this subparagraph shall be fined in  
13          the amount that a person who sells alcoholic  
14          beverages to a minor is fined under State law.

15          “(H) NOTICE TO EMPLOYEES.—Each  
16          owner of a retail establishment which sells to-  
17          bacco and other tobacco products containing  
18          nicotine shall notify each individual employed in  
19          the establishment as a retail sales clerk that the  
20          sale of tobacco and such products to individuals  
21          under the age of 18 and the purchase by such  
22          individuals of tobacco and such products are  
23          prohibited. Such notice shall be provided to  
24          such an employee before such employee begins  
25          work as a retail sales clerk or if such work has

1           been begun, within 30 days of the date of the  
2           enactment of this paragraph. Such an employee  
3           shall sign a form stating that such employee  
4           has been notified of the prohibited acts. Such  
5           an owner shall retain such forms and make  
6           them available to persons conducting inspec-  
7           tions under this paragraph. An owner who fails  
8           to make such notice or retain such a form shall  
9           be fined not less than \$100 and not more than  
10          \$250.

11           “(I) LICENSES.—No person may engage in  
12          the retail sale of cigarettes without a license is-  
13          sued for such purpose by the State. The license  
14          shall be—

15                   “(i) issued in accordance with such  
16                   system,

17                   “(ii) issued for such fee, and

18                   “(iii) issued for such term,

19          as the State shall establish. The State shall es-  
20          tablish penalties (including loss of license) for  
21          sales without a license and other sales in viola-  
22          tion of this paragraph.

23           “(J) STATE RESPONSIBILITIES.—The  
24          State shall conduct annual random unan-  
25          nounced inspections of over-the-counter and

1 vending machine outlets for the sale of tobacco  
2 and other tobacco products containing nicotine  
3 to assure that sales of tobacco and other to-  
4 bacco products containing nicotine are being  
5 made in accordance with this paragraph so that  
6 individuals under the age of 18 do not have ac-  
7 cess to tobacco and other tobacco products con-  
8 taining nicotine.

9 “(K) ADVERTISING.—

10 “(i) BILLBOARDS.—Billboards which  
11 advertise tobacco and other tobacco prod-  
12 ucts containing nicotine may not be placed  
13 within the line of sight of any individual in  
14 a school or in an area designated as a  
15 playground.

16 “(ii) BRAND NAMES AND LOGOS.—

17 The brand name or logo of a manufacturer  
18 of tobacco and other tobacco products con-  
19 taining nicotine may not be placed on any  
20 item marketed specifically to minors, in-  
21 cluding toys and video games.”.

22 (b) CONFORMING AMENDMENTS.—Section 1926 of  
23 the Public Health Service Act (42 U.S.C. sec. 300x–26)  
24 is amended—

1 (1) in subsection (a)(2), by striking “1993” and  
2 inserting “1998”;

3 (2) in subsection (a)(2), by striking “1994” and  
4 inserting “1999”; and

5 (3) in subsection (a)(2), by striking “1995” and  
6 inserting “2000”;

7 (4) in subsection (d)(1), by striking “1995”  
8 and inserting “2000”; and

9 (5) in subsection (d)(2), by striking “1994”  
10 and inserting “1999”.

11 (c) NONCOMPLIANCE.—Section 1926(c) of the Public  
12 Health Service Act (42 U.S.C. sec. 300x-26(c)) is  
13 amended—

14 (1) in paragraph (1), by striking “10 percent”  
15 and inserting “20 percent”;

16 (2) in paragraph (2), by striking “20 percent”  
17 and inserting “40 percent”;

18 (3) in paragraph (3), by striking “30 percent”  
19 and inserting “60 percent”; and

20 (4) in paragraph (4), by striking “40 percent”  
21 and inserting “80 percent”.

22 (d) ENFORCEMENT.—Section 1926 of the Public  
23 Health Service Act (42 U.S.C. sec. 300x-26) is amended  
24 by adding at the end thereof the following:

1       “(e) ENFORCEMENT.—Any amounts made available  
2 to a State through a grant under section 1921 may be  
3 used to enforce the laws described in subsection (a).”.

4 **SEC. 4. REPORT.**

5       The Secretary of Health and Human Services shall  
6 make an annual report to the Congress on the actions  
7 taken by the States in compliance with section 1926(a)(1)  
8 of the Public Health Service Act as amended by section  
9 3.

○