116TH CONGRESS
1ST SESSION

S. 1258

To prohibit the sale of tobacco products to individuals under the age of 21.

IN THE SENATE OF THE UNITED STATES

APRIL 30, 2019

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

A BILL

To prohibit the sale of tobacco products to individuals under the age of 21.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Tobacco to 21 Act”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) Tobacco use has caused more than 20,800,000 premature deaths in the United States since the Surgeon General’s first report on smoking in 1964.
(2) The 1964 Surgeon General’s report linked cigarette smoking to cancer, and since then, other tobacco products, including cigars, cigarillos, roll-your-own products, and smokeless tobacco have been causally linked to cancer.

(3) While substantial gains have been made since 1964, tobacco use remains the leading preventable cause of death in the United States, responsible for more than 480,000 premature deaths each year.

(4) Tobacco use costs the United States approximately $175,000,000,000 in direct medical costs and $156,000,000,000 in lost productivity every year.

(5) More than 34,000,000 people in the United States still smoke, and the tobacco industry continues to challenge tobacco control measures in court, manipulate products to evade existing regulations, introduce new and dangerous tobacco products, and spend billions of dollars on marketing to deceive the public and addict more children.

(6) An estimated 5,600,000 youth aged 17 and under are projected to die prematurely from a tobacco-related illness if prevalence rates do not change.
(7) Each day in the United States, more than 2,000 youth under 18 years of age smoke their first cigarette.

(8) Use of tobacco products in any form is not safe, especially during adolescence, as such use can lead to nicotine dependence and subsequent tobacco-related diseases and death.

(9) Adolescents are especially vulnerable to the effects of nicotine and nicotine addiction and appear to show signs of nicotine addiction at lower levels of exposure compared to adults.

(10) Nicotine exposure during adolescence may have lasting adverse consequences on brain development. According to the Surgeon General, the use of products containing nicotine in any form among youth, including in electronic cigarettes, is unsafe.

(11) The likelihood of developing smoking-related cancers increases with duration of smoking. Therefore, smokers that start at younger ages and continue to smoke are at higher risk for tobacco-related disease and death.

(12) National data show that about 94 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when
many smokers move from experimental smoking to regular, daily use.

(13) Three-quarters of adults in the United States favor raising the tobacco age of sale to 21 years, including 7 in 10 smokers.

(14) In 2018, the Surgeon General issued an advisory on the electronic cigarette epidemic among youth. Electronic cigarette use among high school students in the United States increased 78 percent from 2017 to 2018. In 2018, more than 3,600,000 youth, including 1 in 5 high school students and 1 in 20 middle school students used electronic cigarettes.

(15) Electronic cigarettes are the most commonly used tobacco product among youth. According to the Surgeon General’s 2016 report on electronic cigarettes, electronic cigarette use is strongly associated with the use of other tobacco products among youth and young adults.

(16) The 2015 report of the National Academy of Medicine entitled, “Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products”, concluded that raising the minimum legal age of sale of tobacco products nationwide will reduce tobacco initiation, particularly
among adolescents aged 15 to 17, and will improve health across the lifespan and save lives. Specifically, the report said that raising the minimum legal age of sale of tobacco products nationwide to age 21 would, over time, lead to a 12-percent decrease in smoking prevalence.

(17) The National Academy of Medicine report also predicts that raising the minimum legal age of sale of tobacco products nationwide to age 21 would result in 223,000 fewer premature deaths, 45,000 fewer deaths from lung cancer, and 4,200,000 fewer years of life lost for those born between 2000 and 2019. In addition, the report concluded that raising the minimum legal age of sale would result in near immediate reductions in preterm birth, low birth weight, and sudden infant death syndrome.

(18) Regulating the retail environment, actively enforcing laws, and educating retailers are strategies that Federal, State, and local governments can take to restrict the availability of tobacco products to youth.

(19) Twelve States, the District of Columbia, and more than 110 localities in an additional 15 States have raised the minimum legal tobacco sale age to 21.
SEC. 3. PROHIBITION AND ENFORCEMENT.

(a) IN GENERAL.—Notwithstanding any other provision of law, including any Federal regulation, it shall be unlawful to sell a tobacco product to anyone under the age of 21 or to sell a tobacco product to anyone under 30 without verification of age by means of photo identification.

(b) AUTHORITY TO ENFORCE.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”) is authorized to enforce the prohibition under subsection (a) and shall take necessary action to enforce such prohibition, including, as appropriate, conducting undercover compliance checks, performing retailer inspections, initiating enforcement actions for noncompliance, and taking any other measures appropriate to help ensure nationwide compliance with such prohibition.

(2) GUIDANCE.—The Secretary may issue guidance concerning the responsibility of persons subject to subsection (a) to ensure compliance with such prohibition.

(c) PENALTIES.—

(1) IN GENERAL.—In the case of a violation of subsection (a), the Secretary may apply the penalties under section 103(q)(2) of the Family Smoking Pre-
vention and Tobacco Control Act (Public Law 111–31), as though such subsection (a) were a regulation promulgated under paragraph (1) of section 906(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387f(d)), notwithstanding paragraph (3)(A)(ii) of such section 906(d).

(2) REPEATED VIOLATIONS.—In the case of repeated violations of subsection (a), alone or combined with violations of other regulations promulgated under 906(d)(1) of the Federal Food, Drug, and Cosmetic Act, the Secretary may impose a penalty under section 303(f)(8) of such Act (21 U.S.C. 333(f)(8)), as though subsection (a) were a regulation promulgated under paragraph (1) of section 906(d) of the Federal Food, Drug, and Cosmetic Act, notwithstanding paragraph (3)(A)(ii) of such section 906(d).

(d) DEFINITION.—In this section, the term “tobacco product” has the meaning given such term in section 201(rr) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(rr)).

(e) EFFECTIVE DATE.—This section shall take effect on January 1, 2020.

(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a State or local govern-
mental entity from establishing, enforcing, or maintaining
a law with respect to sales of tobacco to individuals below
a minimum age, provided that such State or local law is
in addition to, or more stringent than, Federal law.

(g) APPLICATION.—The prohibition under subsection
(a) applies only to a manufacturer, distributor, retailer,
third-party marketplace, or other commercial entity that
sells tobacco products.