

105TH CONGRESS  
1ST SESSION

# H. R. 1772

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

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 1997

Mr. WAXMAN (for himself, Mr. HANSEN, and Mr. MEEHAN) introduced the following bill; which was referred to the Committee on Commerce

---

## 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.—Within 1 year  
8 after the date of the enactment of this Act and annually  
9 thereafter the Secretary shall conduct a survey to deter-

mine the number of children who used each manufacturer's tobacco products within the past 30 days.

(b) **BASELINE LEVEL.**—The baseline level of child tobacco product use of a manufacturer is the number of children determined to have used the tobacco products of such manufacturer in the first annual performance survey.

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

(a) **PERFORMANCE STANDARDS FOR EXISTING MANUFACTURERS.**—Each manufacturer which manufactured a tobacco product on or before the date of the enactment of this Act shall reduce the number of children who use its tobacco products such that the number of children determined to have used its tobacco products on the basis of—

(1) the second annual performance survey is equal to or less than (A) 80 percent of the manufacturer's baseline level, or (B) the de minimis level, whichever is greater;

(2) the third annual performance survey is equal to or less than (A) 60 percent of the manufacturer's baseline level, or (B) the de minimis level, whichever is greater;

(3) the fourth annual performance survey is equal to or less than (A) 40 percent of the manufac-

1 turer's baseline level, or (B) the de minimis level,  
2 whichever is greater;

3 (4) the fifth annual performance survey is equal  
4 to or less than (A) 20 percent of the manufacturer's  
5 baseline level, or (B) the de minimis level, whichever  
6 is greater; and

7 (5) the sixth annual performance survey and  
8 each annual performance survey conducted there-  
9 after is equal to or less than (A) 10 percent of the  
10 manufacturer's baseline level, or (B) the de minimis  
11 level, whichever is greater.

12 (b) PERFORMANCE STANDARDS FOR NEW MANUFAC-  
13 TURERS.—Any manufacturer of a tobacco product which  
14 begins to manufacture a tobacco product after the date  
15 of the enactment of this Act shall ensure that the number  
16 of children determined to have used the manufacturer's  
17 tobacco products in each annual performance survey con-  
18 ducted after the manufacturer begins to manufacture to-  
19 bacco products is equal to or less than the de minimis  
20 level.

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

1 **SEC. 4. NONCOMPLIANCE.**

2 (a) FIRST VIOLATION.—If a manufacturer of a to-  
3 bacco product violates a performance standard, the manu-  
4 facturer shall pay a noncompliance fee of \$1 for each unit  
5 of its tobacco product which is distributed for consumer  
6 use in the year following the year in which the perform-  
7 ance standard is violated.

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

14 (c) REDUCTION IN NONCOMPLIANCE FEE.—If a  
15 manufacturer achieves more than 90 percent of the reduc-  
16 tion in the number of children who use its tobacco prod-  
17 ucts that is required under the applicable performance  
18 standard, the noncompliance fee required to be paid by  
19 the manufacturer shall be reduced on a pro rata basis such  
20 that there shall be a noncompliance fee reduction of 10  
21 percent for each percentage point over 90 percent achieved  
22 by the manufacturer.

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

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

2 (a) FUNDS FOR ENFORCEMENT AND EDUCATION.—

3 The first \$1,000,000,000 of noncompliance fees collected  
4 in any fiscal year shall go into a Tobacco Enforcement  
5 and Education Fund in the United States Treasury. Fees  
6 in such fund shall be available to the Secretary, without  
7 fiscal year limitation, to enforce this Act and other Fed-  
8 eral laws relating to tobacco use by children and for public  
9 education to discourage children from using tobacco prod-  
10 ucts.

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

15 **SEC. 6. JUDICIAL REVIEW.**

16 A manufacturer of tobacco products may seek judicial  
17 review of any action under this Act only after a noncompli-  
18 ance fee has been assessed and paid by the manufacturer  
19 and only in the United States District Court for the Dis-  
20 trict of Columbia. In an action by a manufacturer seeking  
21 judicial review of an annual performance survey, the man-  
22 ufacturer may prevail—

23 (1) only if the manufacturer shows that the re-  
24 sults of the performance survey were arbitrary and  
25 capricious; and

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

5 **SEC. 7. ENFORCEMENT.**

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

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

11 **SEC. 8. PREEMPTION.**

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

15 **SEC. 9. DEFINITIONS.**

16          For purposes of this Act:

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

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

23               (3) CIGARETTE TOBACCO.—The term “cigarette  
24               tobacco” means any product that consists of loose

1 tobacco that contains or delivers nicotine and is in-  
2 tended for use by consumers in a cigarette.

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

7 (5) MANUFACTURER.—The term “manufac-  
8 turer” means any person who manufactures a to-  
9 bacco product.

10 (6) SECRETARY.—The term “Secretary” means  
11 the Secretary of Health and Human Services.

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

16 (8) TOBACCO PRODUCT.—The term “tobacco  
17 product” means a cigarette, cigarette tobacco, or  
18 smokeless tobacco.

19 (9) UNIT.—The term “unit” when used in con-  
20 nection with a tobacco product means 20 cigarettes  
21 in the case of cigarettes and the smallest amount of  
22 tobacco distributed by a manufacturer for consumer  
23 use in the case of any other tobacco product.

○