

105TH CONGRESS  
1ST SESSION

# S. 1238

To amend section 1926 of the Public Health Service Act to encourage States to strengthen their efforts to prevent the sale and distribution of tobacco products to individuals under the age of 18 and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 1997

Mr. SMITH of Oregon 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 amend section 1926 of the Public Health Service Act to encourage States to strengthen their efforts to prevent the sale and distribution of tobacco products to individuals under the age of 18 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 “Tobacco Use by Minors  
5 Deterrence Act of 1997”.

1 **SEC. 2. AMENDMENT TO SECTION 1926 OF THE PUBLIC**  
 2 **HEALTH SERVICE ACT.**

3 Section 1926 of the Public Health Service Act (42  
 4 U.S.C. 300x-26) is amended to read as follows:

5 **“SEC. 1926. STATE LAWS REGARDING SALE OF TOBACCO**  
 6 **PRODUCTS TO INDIVIDUALS UNDER THE AGE**  
 7 **OF 18.**

8 “(a) MODEL LAW.—

9 “(1) IN GENERAL.—Subject to paragraph (2),  
 10 for fiscal year 1998 and each subsequent fiscal year,  
 11 the Secretary shall reduce, as provided in subsection  
 12 (d), the amount of any grant under section 1921  
 13 that does not have in effect a law with the following  
 14 provisions:

15 **‘SECTION 1. DISTRIBUTION TO MINORS.**

16 ‘(a) IN GENERAL.—No person shall distribute a to-  
 17 bacco product to an individual under 18 years of age. A  
 18 person who violates this subsection is liable for—

19 ‘(1) a civil money penalty of \$25 for the first  
 20 violation of this subsection;

21 ‘(2) a civil money penalty of \$50 for a second  
 22 violation of this subsection; and

23 ‘(3) a civil money penalty of \$150 for a third  
 24 and subsequent violation of this subsection.

25 ‘(b) EMPLOYERS.—The employer of an employee who  
 26 has violated subsection (a) more than once while in the

1 employ of the employer is liable for a civil money penalty  
2 of \$150 for each violation by such employee. An employer  
3 who pays a civil money penalty under this subsection shall  
4 not, for purposes of section 10, be considered as having  
5 violated this Act.

6 ‘(b) DEFENSES.—It shall be a defense to a charge  
7 brought under subsection (a) that—

8 ‘(1) the defendant—

9 ‘(A) relied upon proof of age that appeared  
10 on its face to be valid, or

11 ‘(B) had complied with the requirements of  
12 section 7, or

13 ‘(2) the individual to whom the tobacco product  
14 was distributed was at the time of the distribution  
15 employed in violation of section 8(b).

16 “(c) ENFORCEMENT.—A person who violates sub-  
17 section (a) shall not be liable for a civil money penalty  
18 unless the individual who received the tobacco product is  
19 proceeded against under section 2(a), except that such a  
20 person shall be liable for such penalty if such individual  
21 was not proceeded against because such individual was  
22 testing compliance with this Act under section 8(b).

1 **‘SEC. 2. PURCHASE, RECEIPT, OR POSSESSION BY MINORS**  
2 **PROHIBITED.**

3       ‘(a) IN GENERAL.—An individual under 18 years of  
4 age shall not purchase or attempt to purchase, receive or  
5 attempt to receive, possess or attempt to possess, smoke  
6 or attempt to smoke, or otherwise use or consume or at-  
7 tempt to use or consume a tobacco product in a public  
8 place. An individual who violates this subsection is liable  
9 for a civil money penalty of not less than \$25 and not  
10 more than \$150 for each violation and shall be subject  
11 to suspension of the individual’s authorization to operate  
12 a motor vehicle. Upon the second or subsequent violation  
13 of this subsection, the authorization of such individual to  
14 operate a motor vehicle shall be suspended for a period  
15 of not less than 30 days and such individual shall be re-  
16 quired to perform community service.

17       ‘(b) NOTICE.—A law enforcement agency, upon de-  
18 termining that an individual under 18 years of age alleg-  
19 edly purchased, received, possessed, smoked, or otherwise  
20 used or attempted to purchase, receive, possess, smoke,  
21 or otherwise use, a tobacco product in violation of sub-  
22 section (a) shall notify the individual’s parent or parents,  
23 custodian, or guardian as to the nature of the violation  
24 if the name and address of a parent, guardian, or custo-  
25 dian is reasonably ascertainable by the law enforcement  
26 agency. The notice required by this subsection shall be

1 made not later than 48 hours after the individual who al-  
 2 legedly violated subsection (a) is cited by such agency for  
 3 the violation. The notice may be made by any means rea-  
 4 sonably calculated to give prompt actual notice, including  
 5 notice in person, by telephone, or by first-class mail.

6 ‘(c) EMPLOYMENT.—Subsection (a) does not prohibit  
 7 an individual under the age of 18 from possessing a to-  
 8 bacco product during regular working hours and in the  
 9 course of such individual’s employment if the tobacco  
 10 product is not possessed for such individual’s consump-  
 11 tion.

12 **‘SEC. 3. SIGNAGE.**

13 ‘It shall be unlawful for any person who sells tobacco  
 14 products over-the-counter to fail to post conspicuously a  
 15 sign communicating that—

16 ‘(1) the sale of tobacco products to individuals  
 17 under the age of 18 is prohibited by law,

18 ‘(2) the purchase of tobacco products by indi-  
 19 viduals under the age of 18 is prohibited by law, and

20 ‘(3) proof of age may be demanded.

21 A person who fails to post a sign in violation of this section  
 22 is liable for a civil money penalty of \$150 for each viola-  
 23 tion.

1 **‘SEC. 4. SAMPLING.**

2       ‘It shall be unlawful for any person to distribute to-  
3 bacco product samples in any face-to-face transaction  
4 without first procuring, from any prospective purchaser or  
5 recipient who appears to be under the age of 18, proof  
6 of age establishing that such prospective purchaser or re-  
7 cipient is 18 years of age or older. A person who violates  
8 this section is liable for a civil money penalty of \$150 for  
9 each violation. This section does not apply to distributions  
10 of tobacco products in an area or establishment that indi-  
11 viduals under the age of 18 are not permitted to enter.

12 **‘SEC. 5. OUT-OF-PACKAGE DISTRIBUTION.**

13       ‘It shall be unlawful for any person to distribute ciga-  
14 rettes or smokeless tobacco products other than in an un-  
15 opened package originating with the manufacturer that  
16 bears the health warning required by Federal law. A per-  
17 son who distributes a cigarette or smokeless tobacco prod-  
18 uct in violation of this section is liable for a civil money  
19 penalty of \$150 for each violation.

20 **‘SEC. 6. DISPLAYS.**

21       ‘(a) GENERAL RULE.—It shall be unlawful for any  
22 person who sells tobacco products to maintain packages  
23 of such products in any display or storage configuration  
24 which affords customers direct access to such packages.

1       ‘(b) PENALTY.—Any person who violates subsection  
 2 (a) is liable for a civil money penalty of \$150 for each  
 3 violation.

4 **‘SEC. 7. NOTIFICATION OF EMPLOYEES.**

5       ‘(a) NOTICE TO EMPLOYEES.—Within 180 days of  
 6 the effective date of this Act, every person engaged in the  
 7 business of distributing tobacco products at retail shall im-  
 8 plement a program to notify each employee employed by  
 9 that person who distributes tobacco products that this  
 10 Act—

11           ‘(1) prohibits the distribution of tobacco prod-  
 12 ucts to any individual under 18 years of age and the  
 13 purchase, receipt, possession, smoking, or other use  
 14 or consumption of tobacco products by any individ-  
 15 ual under 18 years of age,

16           ‘(2) prohibits out-of-package distribution of  
 17 cigarettes and smokeless tobacco products, and

18           ‘(3) permits a defense to a charge of distribu-  
 19 tion of a tobacco product to an individual under 18  
 20 years of age based on evidence that the defendant  
 21 relied upon proof of age that appeared on its face  
 22 to be valid.

23 Any employer failing to provide the required notice to any  
 24 employee shall be liable for a civil money penalty of \$150  
 25 for each violation.

1       ‘(b) STATEMENT.—It shall be a defense to a charge  
2 that an employer violated subsection (a) of this section  
3 that the employee acknowledged receipt, either in writing  
4 or by electronic means, of a statement in substantially the  
5 following form:

6       “I understand that State law prohibits the distribu-  
7 tion of tobacco products to individuals under 18  
8 years of age and out-of-package distribution of ciga-  
9 rettes and smokeless tobacco products and permits  
10 a defense based on evidence that a prospective pur-  
11 chaser’s proof of age was reasonably relied upon and  
12 appeared on its face to be valid. I understand that  
13 if I sell, give, or voluntarily provide tobacco products  
14 to an individual under the age of 18, I may be found  
15 responsible for a civil money penalty of \$150 for  
16 each violation. I promise to comply with this law.”

17       ‘(c) VICARIOUS LIABILITY.—If an employer is  
18 charged with a violation of subsection (a) and the em-  
19 ployer uses as a defense to such charge the defense pro-  
20 vided by subsection (b), the employer shall be deemed to  
21 be liable for such violation if such employer pays the pen-  
22 alty imposed on the employee involved in such violation  
23 or in any way reimburses the employee for such penalty.



1 **‘SEC. 8. RANDOM UNANNOUNCED INSPECTIONS; REPORT-**  
2 **ING; AND COMPLIANCE.**

3       ‘(a) ENFORCEMENT AND INSPECTION.—The State  
4 Police of a State, or such local law enforcement authority  
5 duly designated by the State Police, shall enforce this Act  
6 in a manner that can reasonably be expected to reduce  
7 the extent to which tobacco products are distributed to  
8 individuals under 18 years of age and shall conduct ran-  
9 dom, unannounced inspections in accordance with the pro-  
10 cedures set forth in this Act and in regulations issued  
11 under section 1926 of the Public Health Service Act (42  
12 U.S.C. 300x–26) to ensure compliance with this Act.

13       ‘(b) USE OF INDIVIDUALS UNDER 18.—The State  
14 may engage an individual under 18 years of age to test  
15 compliance with this Act, except that such an individual  
16 may be used to test compliance with this Act only if the  
17 testing is conducted under the following conditions:

18               ‘(1) Prior to use of any individual under the  
19 age of 18 years in a random, unannounced inspec-  
20 tion, written consent shall be obtained from such in-  
21 dividual’s parents or legal guardian.

22               ‘(2) An individual under 18 years of age shall  
23 act solely under the supervision and direction of the  
24 State during a random, unannounced inspection.

25               ‘(3) An individual under 18 years of age used  
26 in random, unannounced inspections shall not be

1       used in any such inspection at a store in which such  
2       individual is a regular customer.

3           ‘(4) If an individual under 18 years of age par-  
4       ticipating in random, unannounced inspections is  
5       questioned about such individual’s age, such person  
6       shall state such individual’s actual age and shall  
7       present a true and correct proof of age if requested  
8       at any time during the inspection to present it.

9       ‘(c) PENALTY.—Any person who uses any person  
10      under 18 years of age, other than as permitted by sub-  
11      section (b), to test compliance with this Act, is liable for  
12      a civil money penalty of \$150 for each violation.

13      ‘(d) USE OF PENALTY MONEY AND FEES.—Civil  
14      money penalties collected for violations of this Act and  
15      fees collected under section 9 may only be used to defray  
16      the costs of administration and enforcement of this Act.

17      **‘SEC. 9. LICENSURE.**

18      ‘(a) IN GENERAL.—The State shall require that each  
19      person engaged in the distribution of tobacco products  
20      hold a license issued under this section. A separate license  
21      shall be required for each place of business where tobacco  
22      products are distributed at retail. A license issued under  
23      this section is not assignable and is valid only for the per-  
24      son in whose name it is issued and for the place of busi-  
25      ness designated in the license.

1       ‘(b) FEE.—The annual license fee is \$50 for each  
2 place of business where tobacco products are distributed  
3 at retail.

4       ‘(c) APPLICATION.—Every application for a license,  
5 including renewal of a license, under this section shall be  
6 made upon a form provided by the State and shall set  
7 forth the name under which the applicant transacts or in-  
8 tends to transact business, the location of the place of  
9 business for which the license is to be issued, the street  
10 address to which all notices relevant to the license are to  
11 be sent (in this Act referred to as ‘notice address’), and  
12 any other identifying information that the State may re-  
13 quire.

14       ‘(d) ACTION ON LICENSE.—The State shall issue or  
15 renew a license or deny an application for a license or the  
16 renewal of a license within 30 days of receiving a properly  
17 completed application and the license fee. The State shall  
18 provide notice to an applicant of action on an application  
19 denying the issuance of a license or refusing to renew a  
20 license.

21       ‘(e) SCOPE AND RENEWAL.—Every license issued by  
22 the State shall be valid for 1 year from the date of issu-  
23 ance and shall be renewed upon application except as oth-  
24 erwise provided in this Act.

1       ‘(f) CHANGE OF ADDRESS.—Upon notification of a  
2 change of address for a place of business for which a li-  
3 cense has been issued, a license shall be reissued for the  
4 new address without the filing of a new application.

5       ‘(g) NOTICE.—The State shall notify every person in  
6 the State who is engaged in the distribution at retail of  
7 tobacco products of the license requirement of this section  
8 and of the date by which such person should have obtained  
9 a license.

10      ‘(h) PENALTY.—

11           ‘(1) IN GENERAL.—Any person who engages in  
12 the distribution at retail of tobacco products without  
13 a license required by this section is liable for a civil  
14 money penalty in an amount equal to two times the  
15 applicable license fee and \$50 for each day on which  
16 such distribution continues without a license.

17           ‘(2) SUSPENSION OR REVOCATION.—Any person  
18 who engages in the distribution at retail of tobacco  
19 products after a license issued under this section has  
20 been suspended or revoked is liable for a civil money  
21 penalty of \$100 per day for each day on which such  
22 distribution continues after the date such person re-  
23 ceived notice of such suspension or revocation.

24      ‘(i) TERM.—The term of a license shall be 1 year.

1       ‘(j) EFFECTIVE DATE.—No person shall engage in  
2 the distribution at retail of tobacco products on or after  
3 180 days after the date of enactment of this Act unless  
4 the person is authorized to do so by a license issued pursu-  
5 ant to this section or is an employee or agent of a person  
6 who has been issued such a license.

7   **‘SEC. 10. SUSPENSION, REVOCATION, DENIAL, AND NON-**  
8                   **RENEWAL OF LICENSES.**

9       ‘(a) NOTICE.—Upon a finding that a licensee has  
10 been determined by a court of competent jurisdiction to  
11 have violated this Act during the license term, the State  
12 shall notify the licensee in writing, served personally or  
13 by registered mail at the notice address, that any subse-  
14 quent violation of this Act at the same place of business  
15 may result in an administrative action to suspend the li-  
16 cense for a period determined by the State.

17       ‘(b) SUSPENSION.—Upon finding that a further vio-  
18 lation by the licensee has occurred involving the same  
19 place of business for which the license was issued and the  
20 licensee has been provided notice under subsection (a), the  
21 State may initiate an administrative action to suspend the  
22 license for a period to be determined by the State. If an  
23 administrative action to suspend a license is initiated, the  
24 State shall immediately notify the licensee in writing at  
25 the notice address of the initiation of the action and the

1 reasons therefore and permit the licensee an opportunity,  
2 at least 30 days after written notice is served personally  
3 or by registered mail upon the licensee, to show why sus-  
4 pension of the license would be unwarranted or unjust.

5       ‘(c) REVOCATION.—The State may initiate an admin-  
6 istrative action to revoke a license that previously has been  
7 suspended under subsection (b) if, during the one year pe-  
8 riod in which the license was issued, a further violation  
9 of this Act is committed after the suspension by the li-  
10 censee involving the same place of business for which the  
11 license was issued. If an administrative action to revoke  
12 a license is initiated, the State shall immediately notify  
13 the licensee in writing at the notice address of the initi-  
14 ation of the action and the reasons therefore and permit  
15 the licensee an opportunity, at least 30 days after written  
16 notice is served personally or by registered mail upon the  
17 licensee, to show why revocation of the license would be  
18 unwarranted or unjust.

19       ‘(d) OTHER VIOLATIONS.—No action with respect to  
20 any license at a place of business may be taken based on  
21 a violation that occurred subsequent to the occurrence of  
22 another violation unless such other violation is fully adju-  
23 dicated at the time the subsequent violation occurred.

24       ‘(e) FEE.—A person whose license has been sus-  
25 pended or revoked with respect to a place of business pur-

1 suant to this section shall pay the State a fee of \$50 for  
2 the renewal or reissuance of the license at that same place  
3 of business.

4       ‘(f) EFFECT ON APPLICATION FOR NEW LICENSE.—  
5 Revocation of a license under subsection (c) with respect  
6 to a place of business shall not be grounds to deny an  
7 application by that person for a new license with respect  
8 to that place of business for more than 12 months subse-  
9 quent to the date of such revocation. Revocation or sus-  
10 pension of a license with respect to a particular place of  
11 business shall not be the grounds to deny an application  
12 for a new license, to refuse to renew a license, or to revoke  
13 or suspend an existing license at another place of business.

14       ‘(g) JUDICIAL REVIEW.—A licensee may seek judicial  
15 review of an action of the State suspending, revoking, de-  
16 nying, or refusing to renew a license under this section  
17 by filing a complaint in a court of competent jurisdiction.  
18 A complaint shall be filed within 30 days after the date  
19 on which notice of the action is received by the licensee.  
20 The court shall review the evidence de novo.

21       ‘(h) REPORT.—The State shall not report any action  
22 suspending, revoking, denying, or refusing to renew a li-  
23 cense under this section to the Secretary of Health and  
24 Human Services, unless judicial review, if any, of the ac-  
25 tion has been completed.

1 **‘SEC. 11. PREEMPTION.**

2       ‘(a) IN GENERAL.—The provisions of this Act shall  
3 not preempt any provisions of State or local law that pro-  
4 vide greater restrictions than those required in this Act.

5       ‘(b) FOOD AND DRUG ADMINISTRATION.—Nothing in  
6 this Act shall be construed to prohibit the Food and Drug  
7 Administration from regulating tobacco as a drug.

8 **‘SEC. 12. SEVERABILITY.**

9       ‘If any provision of this Act or its application to any  
10 person or circumstance is held invalid, such holding shall  
11 not affect other provisions or applications of this Act that  
12 can be given effect without the invalid application.

13 **‘SEC. 13. NO PRIVATE RIGHT OF ACTION.**

14       ‘Nothing in this Act shall be construed to create a  
15 right of action by any private person for any violation of  
16 any provision of this Act.

17 **‘SEC. 14. JURISDICTION AND VENUE.**

18       ‘Any action alleging a violation of this Act may only  
19 be brought in a court of general jurisdiction in the city  
20 or county where the violation is alleged to have occurred.

21 **‘SEC. 15. REPORT.**

22       ‘The State shall prepare for submission annually to  
23 the Secretary of Health and Human Services the report  
24 required by section 1926 of the Public Health Service Act  
25 (42 U.S.C. 300x–26) and otherwise shall be responsible  
26 for the State’s reporting of compliance with that section



1 and any implementing regulations promulgated by the  
2 Secretary.

3 **‘SEC. 16. DEFINITIONS.**

4 ‘For purposes of this Act:

5 ‘(1) DIRECT ACCESS.—The term “direct ac-  
6 cess” means the ability of a customer to obtain  
7 physically a package of tobacco products without the  
8 intervention of an employee of the establishment.

9 ‘(2) PACKAGE.—The term “package” means a  
10 pack, box, carton, pouch, or container of any kind  
11 in which cigarettes or smokeless tobacco products  
12 are offered for sale, sold, or otherwise distributed to  
13 consumers.

14 ‘(3) PROOF OF AGE.—The term “proof of age”  
15 means a driver’s license or other form of identifica-  
16 tion issued by a governmental authority or other  
17 identification that includes a photograph and the  
18 date of birth of the individual.

19 ‘(4) SAMPLE.—The term “sample” means a to-  
20 bacco product distributed to members of the public  
21 at no cost for the purpose of promoting the product,  
22 but excludes tobacco products distributed—

23 ‘(A) in conjunction with the sale of other  
24 tobacco products,

1                   ‘(B) to consumer or market research pan-  
2                   els,

3                   ‘(C) to persons employed in the trade, or

4                   ‘(D) to customers or consumers in re-  
5                   sponse to customer or consumer complaints.

6                   ‘(5) TOBACCO PRODUCT.—The term “tobacco  
7                   product” means—

8                   ‘(A) “tobacco products” as defined in sec-  
9                   tion 5702 of the Internal Revenue Code of  
10                  1986, or

11                  ‘(B) any other product containing tobacco  
12                  as a principal ingredient which, because of its  
13                  appearance, type, or tobacco used in the prod-  
14                  uct, or its packaging and labeling, is likely to  
15                  be offered to, or purchased by, consumers as a  
16                  tobacco product as described in subparagraph  
17                  (A).’.

18                  “(2) DELAYED APPLICABILITY FOR CERTAIN  
19                  STATES.—In the case of a State whose legislature  
20                  does not convene a regular session in fiscal year  
21                  1998, the requirement described in paragraph (1) as  
22                  a condition of avoiding a reduction in a grant under  
23                  section 1921 shall apply only for fiscal year 1999  
24                  and subsequent fiscal years.

25                  “(b) ENFORCEMENT.—

1           “(1) IN GENERAL.—For the first applicable fis-  
 2           cal year and for each subsequent fiscal year, a fund-  
 3           ing agreement for a grant under section 1921 of the  
 4           Public Health Service Act is a funding agreement  
 5           under which the State involved will—

6                   “(A) enforce the law described in sub-  
 7                   section (a)(1) systematically and conscientiously  
 8                   and in a manner that can reasonably be ex-  
 9                   pected to reduce the extent to which tobacco  
 10                  products are available to individuals under the  
 11                  age of 18; and

12                  “(B) certify that it requires such enforce-  
 13                  ment of such law to be treated as a priority by  
 14                  State and local law enforcement authorities.

15           “(2) ACTIVITIES AND REPORTS REGARDING EN-  
 16           FORCEMENT.—For the first applicable fiscal year  
 17           and for each subsequent fiscal year, a funding agree-  
 18           ment for a grant under section 1921 is a funding  
 19           agreement under which the State involved will—

20                   “(A) conduct random, unannounced in-  
 21                   spections to ensure compliance with the law de-  
 22                   scribed in subsection (a)(1); and

23                   “(B) annually submit to the Secretary a  
 24                  report describing—

1 “(i) the activities carried out by the  
2 State to enforce such law during the fiscal  
3 year preceding the fiscal year for which the  
4 State is seeking the grant;

5 “(ii) the steps taken by the State to  
6 ensure that enforcement of such law was  
7 treated as a priority by State and local law  
8 enforcement authorities;

9 “(iii) the extent of success the State  
10 has achieved in reducing the availability of  
11 tobacco products to individuals under the  
12 age of 18, including the results of the in-  
13 spections conducted under subparagraph  
14 (A); and

15 “(iv) the strategies to be utilized by  
16 the State for enforcing such law during the  
17 fiscal year for which the grant is sought.

18 “(c) FUNDING.—The law specified in subsection  
19 (a)(1) may be administered and enforced by a State  
20 using—

21 “(1) any amounts made available to the State  
22 through a grant under section 1921;

23 “(2) any amounts made available to the State  
24 under section 1901 (42 U.S.C. 300w);

1           “(3) any fees collected for licenses issued pursu-  
2           ant to the law described in subsection (a)(1);

3           “(4) any fines or penalties assessed for viola-  
4           tions of the law specified in subsection (a)(1); or

5           “(5) any other funding source that the legisla-  
6           ture of the State may prescribe by statute.

7           “(d) NONCOMPLIANCE OF STATE.—Before making a  
8           grant under section 1921 to a State for the first applicable  
9           fiscal year or any subsequent fiscal year, the Secretary  
10          shall make a determination whether the State has main-  
11          tained compliance with subsections (a) and (b). If, after  
12          notice to the State and an opportunity for a hearing, the  
13          Secretary determines that the State is not in compliance  
14          with such subsections, the Secretary shall reduce the  
15          amount of the allotment under such section for the State  
16          for the fiscal year involved by an amount equal to—

17               “(1) in the case of the first applicable fiscal  
18               year, 10 percent of the amount determined under  
19               section 1933 for the State for the fiscal year;

20               “(2) in the case of the first fiscal year following  
21               such applicable fiscal year, 20 percent of the amount  
22               determined under section 1933 for the State for the  
23               fiscal year;

1           “(3) in the case of the second such fiscal year,  
 2           30 percent of the amount determined under section  
 3           1933 for the State for the fiscal year; and

4           “(4) in the case of the third such fiscal year or  
 5           any subsequent fiscal year, 40 percent of the amount  
 6           determined under section 1933 for the State for the  
 7           fiscal year.

8           “(e) DEFINITION.—For purposes of this section, the  
 9           term ‘first applicable fiscal year’ means—

10           “(1) fiscal year 1999, in the case of any State  
 11           described in subsection (a)(2); and

12           “(2) fiscal year 1998, in the case of any other  
 13           State.

14           “(f) APPLICATION.—For purposes of this section, ref-  
 15           erences to section 1921 shall include any successor grant  
 16           programs.”.

17   **SEC. 3. EFFECTIVE DATE.**

18           This Act and the amendments made by this Act shall  
 19           take effect on January 1, 1999.

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