

105TH CONGRESS  
1ST SESSION

# S. 826

To amend the Public Health Service Act to protect the public from health hazards caused by exposure to environmental tobacco smoke, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 3, 1997

Mr. LAUTENBERG (for himself, Mr. DURBIN, and Mr. KERRY of Massachusetts) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Public Health Service Act to protect the public from health hazards caused by exposure to environmental tobacco smoke, 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 “Smoke-Free Environ-  
5 ment Act of 1997”.

6 **SEC. 2. SMOKE-FREE ENVIRONMENT POLICY.**

7 The Public Health Service Act (42 U.S.C. 201 et  
8 seq.) is amended by adding at the end the following:



1       **“TITLE XXVIII—SMOKE-FREE**  
2                   **ENVIRONMENTS**

3   **“SEC. 2801. SMOKE-FREE ENVIRONMENT POLICY.**

4       “(a) POLICY REQUIRED.—In order to protect chil-  
5 dren and adults from cancer, respiratory disease, heart  
6 disease, and other adverse health effects from breathing  
7 environmental tobacco smoke, the responsible entity for  
8 each public facility shall adopt and implement at such fa-  
9 cility a smoke-free environment policy which meets the re-  
10 quirements of subsection (b).

11       “(b) ELEMENTS OF POLICY.—Each smoke-free envi-  
12 ronment policy for a public facility shall—

13               “(1) prohibit the smoking of cigarettes, cigars,  
14               and pipes, and any other combustion of tobacco,  
15               within the facility and on facility property within the  
16               immediate vicinity of the entrance to the facility;  
17               and

18               “(2) post a clear and prominent notice of the  
19               smoking prohibition in appropriate and visible loca-  
20               tions at the public facility.

21 The policy may provide an exception to the prohibition  
22 specified in paragraph (1) for one or more specially des-  
23 ignated smoking areas within a public facility if such area  
24 or areas meet the requirements of subsection (c).

1       “(c) SPECIALLY DESIGNATED SMOKING AREAS.—A  
 2 specially designated smoking area meets the requirements  
 3 of this subsection if it satisfies each of the following condi-  
 4 tions:

5           “(1) The area is ventilated in accordance with  
 6 specifications promulgated by the Administrator that  
 7 ensure that air from the area is directly exhausted  
 8 to the outside and does not recirculate or drift to  
 9 other areas within the public facility.

10          “(2) Nonsmoking individuals do not have to  
 11 enter the area for any purpose.

12          “(3) Children under the age of 15 are prohib-  
 13 ited from entering the area.

14 **“SEC. 2802. CITIZEN ACTIONS.**

15       “(a) IN GENERAL.—An action may be brought to en-  
 16 force the requirements of this title by any aggrieved per-  
 17 son, any State or local government agency, or the Admin-  
 18 istrator.

19       “(b) VENUE.—Any action to enforce this title may  
 20 be brought in any United States district court for the dis-  
 21 trict in which the defendant resides or is doing business  
 22 to enjoin any violation of this title or to impose a civil  
 23 penalty for any such violation in the amount of not more  
 24 than \$5,000 per day of violation. The district courts shall  
 25 have jurisdiction, without regard to the amount in con-

1 troversy or the citizenship of the parties, to enforce this  
2 title and to impose civil penalties under this title.

3 “(c) NOTICE.—An aggrieved person shall give any al-  
4 leged violator notice of at least 60 days prior to commence-  
5 ing an action under this section. No action may be com-  
6 menced by an aggrieved person under this section if such  
7 alleged violator complies with the requirements of this title  
8 within such 60-day period and thereafter.

9 “(d) COSTS.—The court, in issuing any final order  
10 in any action brought pursuant to this section, may award  
11 costs of litigation (including reasonable attorney and ex-  
12 pert witness fees) to any prevailing party, whenever the  
13 court determines such award is appropriate.

14 “(e) PENALTIES.—The court in any action under this  
15 section to apply civil penalties shall have discretion to  
16 order that such civil penalties be used for projects that  
17 further the policies of this title. The court shall obtain the  
18 view of the Administrator in exercising such discretion and  
19 selecting any such projects.

20 “(f) DAMAGES.—No damages of any kind, whether  
21 compensatory or punitive, shall be awarded in actions  
22 brought pursuant to this title.

23 “(g) ISOLATED INCIDENTS.—Violations of the prohi-  
24 bition specified in section 2801(b)(1) by an individual  
25 within a public facility or on facility property shall not

1 be considered violations of this title on the part of the re-  
 2 sponsible entity if such violations—

3 “(1) are isolated incidents that are not part of  
 4 a pattern of violations of such prohibition; and

5 “(2) are not authorized by the responsible en-  
 6 tity.

7 **“SEC. 2803. PREEMPTION.**

8 “Nothing in this title shall preempt or otherwise af-  
 9 fect any other Federal, State or local law which provides  
 10 protection from health hazards from environmental to-  
 11 bacco smoke.

12 **“SEC. 2804. REGULATIONS.**

13 “The Administrator is authorized to promulgate such  
 14 regulations as the Administrator deems necessary to carry  
 15 out this title.

16 **“SEC. 2805. EFFECTIVE DATE.**

17 “The requirements of this title shall take effect on  
 18 the date that is 1 year after the date of the enactment  
 19 of the Smoke-Free Environment Act of 1997.

20 **“SEC. 2806. DEFINITIONS.**

21 “In this title:

22 “(1) ADMINISTRATOR.—The term ‘Adminis-  
 23 trator’ means the Administrator of the Environ-  
 24 mental Protection Agency.

1           “(2) PUBLIC FACILITY.—The term ‘public facil-  
 2           ity’ means any building regularly entered by 10 or  
 3           more individuals at least one day per week, including  
 4           any such building owned by or leased to a Federal,  
 5           State, or local government entity. Such term shall  
 6           not include any building or portion thereof regularly  
 7           used for residential purposes.

8           “(3) RESPONSIBLE ENTITY.—The term ‘respon-  
 9           sible entity’ means, with respect to any public facil-  
 10          ity, the owner of such facility, except that in the  
 11          case of any such facility or portion thereof which is  
 12          leased, such term means the lessee.”.

13 **SEC. 3. PROHIBITIONS AGAINST SMOKING ON SCHEDULED**  
 14 **FLIGHTS.**

15          (a) IN GENERAL.—Section 41706 of title 49, United  
 16 States Code, is amended to read as follows:

17 **“§ 41706. Prohibitions against smoking on scheduled**  
 18 **flights**

19          “(a) SMOKING PROHIBITION IN INTRASTATE AND  
 20 INTERSTATE AIR TRANSPORTATION.—An individual may  
 21 not smoke in an aircraft on a scheduled airline flight seg-  
 22 ment in interstate air transportation or intrastate air  
 23 transportation.

24          “(b) SMOKING PROHIBITION IN FOREIGN AIR  
 25 TRANSPORTATION.—The Secretary of Transportation

1 shall require all air carriers and foreign air carriers to pro-  
2 hibit, on and after the 120th day following the date of  
3 the enactment of the Smoke-Free Environment Act of  
4 1997, smoking in any aircraft on a scheduled airline flight  
5 segment within the United States or between a place in  
6 the United States and a place outside the United States.

7 “(c) LIMITATION ON APPLICABILITY.—With respect  
8 to an aircraft operated by a foreign air carrier, the smok-  
9 ing prohibitions contained in subsections (a) and (b) shall  
10 apply only to the passenger cabin and lavatory of the air-  
11 craft.

12 “(d) REGULATIONS.—The Secretary shall prescribe  
13 regulations necessary to carry out this section.”.

14 (b) EFFECTIVE DATE.—The amendment made by  
15 subsection (a) shall take effect on the 60th day following  
16 the date of the enactment of this Act.

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