

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 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 to 21 Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) Tobacco use has caused more than
8 20,800,000 premature deaths in the United States
9 since the Surgeon General’s first report on smoking
10 in 1964.

1 (2) The 1964 Surgeon General's report linked
2 cigarette smoking to cancer, and since then, other
3 tobacco products, including cigars, cigarillos, roll-
4 your-own products, and smokeless tobacco have been
5 causally linked to cancer.

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

10 (4) Tobacco use costs the United States ap-
11 proximately \$175,000,000,000 in direct medical
12 costs and \$156,000,000,000 in lost productivity
13 every year.

14 (5) More than 34,000,000 people in the United
15 States still smoke, and the tobacco industry con-
16 tinues to challenge tobacco control measures in
17 court, manipulate products to evade existing regula-
18 tions, introduce new and dangerous tobacco prod-
19 ucts, and spend billions of dollars on marketing to
20 deceive the public and addict more children.

21 (6) An estimated 5,600,000 youth aged 17 and
22 under are projected to die prematurely from a to-
23 bacco-related illness if prevalence rates do not
24 change.

1 (7) Each day in the United States, more than
2 2,000 youth under 18 years of age smoke their first
3 cigarette.

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

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

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

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

22 (12) National data show that about 94 percent
23 of adult smokers begin smoking before they turn 21.
24 The ages of 18 to 21 are a critical period when

1 many smokers move from experimental smoking to
2 regular, daily use.

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

6 (14) In 2018, the Surgeon General issued an
7 advisory on the electronic cigarette epidemic among
8 youth. Electronic cigarette use among high school
9 students in the United States increased 78 percent
10 from 2017 to 2018. In 2018, more than 3,600,000
11 youth, including 1 in 5 high school students and 1
12 in 20 middle school students used electronic ciga-
13 rettes.

14 (15) Electronic cigarettes are the most com-
15 monly used tobacco product among youth. According
16 to the Surgeon General's 2016 report on electronic
17 cigarettes, electronic cigarette use is strongly associ-
18 ated with the use of other tobacco products among
19 youth and young adults.

20 (16) The 2015 report of the National Academy
21 of Medicine entitled, "Public Health Implications of
22 Raising the Minimum Age of Legal Access to To-
23 bacco Products", concluded that raising the min-
24 imum legal age of sale of tobacco products nation-
25 wide will reduce tobacco initiation, particularly

1 among adolescents aged 15 to 17, and will improve
2 health across the lifespan and save lives. Specifically,
3 the report said that raising the minimum legal age
4 of sale of tobacco products nationwide to age 21
5 would, over time, lead to a 12-percent decrease in
6 smoking prevalence.

7 (17) The National Academy of Medicine report
8 also predicts that raising the minimum legal age of
9 sale of tobacco products nationwide to age 21 would
10 result in 223,000 fewer premature deaths, 45,000
11 fewer deaths from lung cancer, and 4,200,000 fewer
12 years of life lost for those born between 2000 and
13 2019. In addition, the report concluded that raising
14 the minimum legal age of sale would result in near
15 immediate reductions in preterm birth, low birth
16 weight, and sudden infant death syndrome.

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

22 (19) Twelve States, the District of Columbia,
23 and more than 110 localities in an additional 15
24 States have raised the minimum legal tobacco sale
25 age to 21.

1 **SEC. 3. PROHIBITION AND ENFORCEMENT.**

2 (a) IN GENERAL.—Notwithstanding any other provi-
3 sion of law, including any Federal regulation, it shall be
4 unlawful to sell a tobacco product to anyone under the
5 age of 21 or to sell a tobacco product to anyone under
6 30 without verification of age by means of photo identi-
7 fication.

8 (b) AUTHORITY TO ENFORCE.—

9 (1) IN GENERAL.—The Secretary of Health and
10 Human Services (referred to in this section as the
11 “Secretary”) is authorized to enforce the prohibition
12 under subsection (a) and shall take necessary action
13 to enforce such prohibition, including, as appro-
14 priate, conducting undercover compliance checks,
15 performing retailer inspections, initiating enforce-
16 ment actions for noncompliance, and taking any
17 other measures appropriate to help ensure nation-
18 wide compliance with such prohibition.

19 (2) GUIDANCE.—The Secretary may issue guid-
20 ance concerning the responsibility of persons subject
21 to subsection (a) to ensure compliance with such
22 prohibition.

23 (c) PENALTIES.—

24 (1) IN GENERAL.—In the case of a violation of
25 subsection (a), the Secretary may apply the penalties
26 under section 103(q)(2) of the Family Smoking Pre-

1 vention and Tobacco Control Act (Public Law 111–
 2 31), as though such subsection (a) were a regulation
 3 promulgated under paragraph (1) of section 906(d)
 4 of the Federal Food, Drug, and Cosmetic Act (21
 5 U.S.C. 387f(d)), notwithstanding paragraph
 6 (3)(A)(ii) of such section 906(d).

7 (2) REPEATED VIOLATIONS.—In the case of re-
 8 peated violations of subsection (a), alone or com-
 9 bined with violations of other regulations promul-
 10 gated under 906(d)(1) of the Federal Food, Drug,
 11 and Cosmetic Act, the Secretary may impose a pen-
 12 alty under section 303(f)(8) of such Act (21 U.S.C.
 13 333(f)(8)), as though subsection (a) were a regula-
 14 tion promulgated under paragraph (1) of section
 15 906(d) of the Federal Food, Drug, and Cosmetic
 16 Act, notwithstanding paragraph (3)(A)(ii) of such
 17 section 906(d).

18 (d) DEFINITION.—In this section, the term “tobacco
 19 product” has the meaning given such term in section
 20 201(rr) of the Federal Food, Drug, and Cosmetic Act (21
 21 U.S.C. 321(rr)).

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

24 (f) RULE OF CONSTRUCTION.—Nothing in this sec-
 25 tion shall be construed to prevent a State or local govern-

1 mental entity from establishing, enforcing, or maintaining
2 a law with respect to sales of tobacco to individuals below
3 a minimum age, provided that such State or local law is
4 in addition to, or more stringent than, Federal law.

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

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