

115TH CONGRESS
1ST SESSION

S. 2100

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 2017

Mr. SCHATZ (for himself, Mr. DURBIN, Mr. MARKEY, Mr. WHITEHOUSE, Mr. REED, Mr. BROWN, Mrs. GILLIBRAND, Ms. WARREN, Ms. HIRONO, Mr. BLUMENTHAL, Mrs. FEINSTEIN, and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit the sale or distribution 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

1 since the Surgeon General's first report on smoking
2 in 1964.

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

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

12 (4) Tobacco use costs the United States ap-
13 proximately \$170,000,000,000 in direct medical
14 costs and \$156,000,000,000 in lost productivity
15 every year.

16 (5) More than 36,000,000 people in the United
17 States still smoke, and the tobacco industry con-
18 tinues to challenge tobacco control measures in
19 court, manipulate products to evade existing regula-
20 tions, introduce new and dangerous tobacco prod-
21 ucts, and spend billions on marketing to deceive the
22 public and addict more children.

23 (6) An estimated 5,600,000 youth aged 17 and
24 under are projected to die prematurely from a to-

1 tobacco-related illness if prevalence rates do not
2 change.

3 (7) Each day in the United States, nearly 2,500
4 youth under 18 years of age smoke their first ciga-
5 rette.

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

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

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

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

24 (12) National data show that about 95 percent
25 of adult smokers begin smoking before they turn 21.

1 The ages of 18 to 21 are a critical period when
2 many smokers move from experimental smoking to
3 regular, daily use.

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

7 (14) Each year, nearly 500,000 youth aged 12
8 to 17 use smokeless tobacco for the first time, and
9 young adults aged 18 to 24 use smokeless products
10 at twice the rate of older adults aged 45 to 64.

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

17 (16) The 2015 report of the National Academy
18 of Medicine entitled, “Public Health Implications of
19 Raising the Minimum Age of Legal Access to To-
20 bacco Products”, concluded that raising the min-
21 imum legal age of sale of tobacco products nation-
22 wide will reduce tobacco initiation, particularly
23 among adolescents aged 15 to 17, and will improve
24 health across the lifespan and save lives. Specifically,
25 the report said that raising the minimum legal age

1 of sale of tobacco products nationwide to age 21
2 would, over time, lead to a 12-percent decrease in
3 smoking prevalence.

4 (17) The National Academy of Medicine report
5 also predicts that raising the minimum legal age of
6 sale of tobacco products nationwide to age 21 would
7 result in 223,000 fewer premature deaths, 50,000
8 fewer deaths from lung cancer, and 4,200,000 fewer
9 years of life lost for those born between 2000 and
10 2019. In addition, the report concluded that raising
11 the minimum legal age of sale would result in near
12 immediate reductions in preterm birth, low birth
13 weight, and sudden infant death syndrome.

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

19 (19) Five States, the District of Columbia, and
20 more than 230 localities in an additional 13 States
21 have raised the minimum legal tobacco sale age to
22 21.

23 **SEC. 3. PROHIBITION AND ENFORCEMENT.**

24 (a) IN GENERAL.—Notwithstanding any other provi-
25 sion of law, including any Federal regulation, it shall be

1 unlawful to sell or distribute a tobacco product to anyone
2 under the age of 21.

3 (b) ENFORCEMENT.—

4 (1) IN GENERAL.—The Secretary of Health and
5 Human Services is authorized to enforce the prohibi-
6 tion under subsection (a) and shall take necessary
7 action to enforce such prohibition, including, as ap-
8 propriate—

9 (A) conducting undercover compliance
10 checks, performing retailer inspections, initi-
11 ating enforcement actions for noncompliance,
12 and taking any other measures appropriate to
13 help ensure nationwide compliance with such
14 prohibition; and

15 (B) establishing requirements that retailers
16 check identification or use other methods to en-
17 sure compliance with subsection (a), or issuing
18 guidance concerning the responsibility of retail-
19 ers to ensure such compliance.

20 (2) ENFORCEMENT AUTHORITY.—In the case of
21 a violation of subsection (a), the Secretary of Health
22 and Human Services may apply the penalties under
23 section 303 of the Federal Food, Drug, and Cos-
24 metic Act (21 U.S.C. 333), as though such sub-
25 section (a) were a regulation promulgated under sec-

1 tion 906(d)(1) of the Federal Food, Drug, and Cos-
2 metic Act (21 U.S.C. 387f(d)(1)), notwithstanding
3 paragraph (3)(A)(ii) of such section 906(d).

4 (c) DEFINITION.—In this Act, the term “tobacco
5 product” has the meaning given such term in section
6 201(rr) of the Federal Food, Drug, and Cosmetic Act (21
7 U.S.C. 321(rr)).

8 **SEC. 4. NON-PREEMPTION.**

9 Nothing in this Act shall be construed to prevent a
10 State or local governmental entity from establishing, en-
11 forcing, or maintaining a law with respect to sales of to-
12 bacco to individuals below a minimum age, provided that
13 such State or local law is at least as restrictive as the
14 Federal law.

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