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H. R. 710

To protect children from exposure to environmental tobacco smoke in the provision of children's services, to require the Administrator of the Environmental Protection Agency to promulgate guidelines for instituting a nonsmoking policy in buildings owned or leased by Federal agencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1993

Mr. DURBIN (for himself, Mr. HANSEN, Mr. MAZZOLI, Mrs. SCHROEDER, Mr. SYNAR, Mr. ANDREWS of Texas, Mr. McDERMOTT, Mr. PORTER, Mr. MILLER of California, Mr. FAWELL, Mr. LAFALCE, Mr. LIPINSKI, Mr. ACKERMAN, Mr. FRANK of Massachusetts, Ms. PELOSI, and Mr. YATES) introduced the following bill; which was referred to the Committee on Energy and Commerce

MARCH 3, 1993

Additional sponsors: Ms. KAPTUR, Mr. EVANS, Mr. KREIDLER, Mrs. MALONEY, Mr. OBERSTAR, Mr. COLEMAN, Mrs. UNSOELD, Mr. GUTIERREZ, Mrs. COLLINS of Illinois, Mr. MCCOLLUM, Ms. WOOLSEY, Ms. SHEPHERD, Ms. NORTON, Mr. JOHNSON of South Dakota, Mr. CONYERS, Ms. SCHENK, Mr. INGLIS of South Carolina, Mr. ROMERO-BARCELÓ, Mr. BARRETT of Wisconsin, Mr. JACOBS, Mr. MCCANDLESS, Mr. BEILENSON, Miss COLLINS of Michigan, Mr. HINCHEY, Mr. FROST, and Mr. BROWN of California

A BILL

To protect children from exposure to environmental tobacco smoke in the provision of children's services, to require the Administrator of the Environmental Protection Agency to promulgate guidelines for instituting a nonsmoking

policy in buildings owned or leased by Federal agencies, 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 “Preventing Our Kids
5 From Inhaling Deadly Smoke (PRO-KIDS) Act of 1993”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) environmental tobacco smoke comes from
9 secondhand smoke exhaled by smokers and
10 sidestream smoke emitted from the burning of ciga-
11 rettes, cigars, and pipes;

12 (2) since citizens of the United States spend up
13 to 90 percent of a day indoors, there is a significant
14 potential for exposure to environmental tobacco
15 smoke from indoor air;

16 (3) exposure to environmental tobacco smoke
17 occurs in schools, public buildings, and other indoor
18 facilities;

19 (4) recent scientific studies have concluded that
20 exposure to environmental tobacco smoke is a cause
21 of lung cancer in healthy nonsmokers and is respon-
22 sible for acute and chronic respiratory problems and
23 other health impacts in sensitive populations (includ-
24 ing children);

1 (5) the health risks posed by environmental to-
2 bacco smoke exceed the risks posed by many envi-
3 ronmental pollutants regulated by the Environ-
4 mental Protection Agency; and

5 (6) according to information released by the
6 Environmental Protection Agency, environmental to-
7 bacco smoke results in a loss to the economy of over
8 \$3,000,000,000 per year.

9 **SEC. 3. DEFINITIONS.**

10 As used in this Act:

11 (1) ADMINISTRATOR.—The term “Adminis-
12 trator” means the Administrator of the Environ-
13 mental Protection Agency.

14 (2) CHILDREN.—The term “children” means
15 individuals who have not attained the age of 18.

16 (3) CHILDREN’S SERVICES.—The term “chil-
17 dren’s services” means—

18 (A) direct health services routinely pro-
19 vided to children; or

20 (B) any other direct services routinely pro-
21 vided primarily to children, including edu-
22 cational services.

23 (4) EXECUTIVE AGENCY.—The term “Executive
24 agency” has the meaning provided in section 105 of
25 title 5, United States Code.

1 (5) FEDERAL AGENCY.—The term “Federal
2 agency” includes any Executive agency, the Execu-
3 tive Office of the President, any military depart-
4 ment, any court of the United States, the Adminis-
5 trative Office of the United States Courts, the Li-
6 brary of Congress, the Botanic Garden, the Govern-
7 ment Printing Office, the Congressional Budget Of-
8 fice, the United States Postal Service, the Postal
9 Rate Commission, the Office of the Architect of the
10 Capitol, the Office of Technology Assessment, and
11 any other agency of the executive, legislative and ju-
12 dicial branches.

13 (6) FEDERAL BUILDING.—The term “Federal
14 building” means any building or other structure
15 owned or leased for use by a Federal agency, except
16 that the term shall not include any area of a build-
17 ing that is used primarily as living quarters.

18 (7) SECRETARY.—The term “Secretary” means
19 the Secretary of Health and Human Services.

20 **SEC. 4. NONSMOKING POLICY FOR FEDERAL BUILDINGS.**

21 (a) IN GENERAL.—

22 (1) ISSUANCE OF GUIDELINES.—Not later than
23 180 days after the date of enactment of this Act, the
24 Administrator shall issue guidelines for instituting

1 and enforcing a nonsmoking policy at each Federal
2 agency.

3 (2) CONTENTS OF GUIDELINES.—A non-
4 smoking policy that meets the requirements of the
5 guidelines shall, at a minimum, prohibit smoking in
6 each indoor portion of a Federal building that is not
7 ventilated separately (as defined by the Adminis-
8 trator) from other portions of the facility.

9 (b) ADOPTION OF GUIDELINES.—

10 (1) IN GENERAL.—As soon as is practicable
11 after the date of issuance of the guidelines referred
12 to in subsection (a), the head of each Executive
13 agency, and the Director of the Administrative Of-
14 fice of the United States Courts shall adopt a non-
15 smoking policy applicable to the Federal agency
16 under the jurisdiction of the individual that meets
17 the requirements of the guidelines referred to in sub-
18 section (a), and take such action as is necessary to
19 ensure that the policy is carried out in the manner
20 specified in the guidelines.

21 (2) LEGISLATIVE BRANCH.—As soon as is prac-
22 ticable after the date of issuance of the guidelines
23 referred to in subsection (a), the following entities
24 and individuals shall adopt a nonsmoking policy that
25 meets the requirements of the guidelines referred to

1 in subsection (a), and take such action as is nec-
2 essary to ensure that the policy is carried out in the
3 manner specified in the guidelines:

4 (A) With respect to the House of Rep-
5 resentatives (including any office space or build-
6 ings of the House of Representatives), the
7 House Office Building Commission.

8 (B) With respect to the Senate (including
9 any office space or buildings of the Senate), the
10 Committee on Rules and Administration of the
11 Senate.

12 (C) With respect to any other area occu-
13 pied or used by a Federal agency of the legisla-
14 tive branch, the Architect of the Capitol.

15 (3) CERTIFICATION FOR EXECUTIVE AGEN-
16 CIES.—The Administrator of General Services, in
17 consultation with the Administrator, shall review
18 each nonsmoking policy adopted by the head of an
19 Executive agency and shall certify those policies that
20 meet the requirements of the guidelines referred to
21 in subsection (a). In carrying out the certification,
22 the Administrator of General Services shall use a
23 procedure and apply criteria that the Administrator
24 shall establish. Except as provided in subsection (c),
25 if a policy does not meet the requirements of the

1 guidelines, the Administrator of General Services
2 shall—

3 (A) in a written communication, advise the
4 head of the Executive agency concerning modi-
5 fications of the policy to meet the requirements;
6 and

7 (B) publish the communication in the Fed-
8 eral Register.

9 (c) WAIVERS.—

10 (1) EXECUTIVE AGENCIES.—The head of an
11 Executive agency may publicly petition the Adminis-
12 trator of General Services for a waiver from institut-
13 ing or enforcing a nonsmoking policy (or policy re-
14 quirement) under the guidelines issued pursuant to
15 subsection (a). The Administrator of General Serv-
16 ices may waive the requirement if, after consultation
17 with the Administrator, the Administrator of Gen-
18 eral Services determines that—

19 (A) unusual extenuating circumstances
20 prevent the head of the Federal agency from
21 enforcing the policy (or a requirement under
22 the policy) (including a case in which the Fed-
23 eral agency shares space in an indoor facility
24 with a non-Federal entity and cannot obtain an
25 agreement with the other entity to abide by the

1 nonsmoking policy requirement) and the head
2 of the Executive agency will establish and make
3 a good-faith effort to enforce an alternative
4 nonsmoking policy (or alternative requirement
5 under the policy) that will protect individuals
6 from exposure to environmental tobacco smoke
7 to the maximum extent possible; or

8 (B) the head of the Executive agency will
9 enforce an alternative nonsmoking policy (or al-
10 ternative requirement under the policy) that
11 will protect individuals from exposure to envi-
12 ronmental tobacco smoke to the same degree as
13 the requirement under the guidelines issued
14 pursuant to subsection (a).

15 (2) AGENCIES OF THE JUDICIAL BRANCH.—

16 After consultation with the Administrator, and after
17 providing public notice and reasonable opportunity
18 for public review and comment, the Director of the
19 Administrative Office of the United States Courts
20 may, on the basis of the criteria for a waiver re-
21 ferred to in paragraph (1), make such modifications
22 to the nonsmoking policy required to be carried out
23 pursuant to subsection (b) as the Director deter-
24 mines to be necessary. The Director may not make

1 any modification that violates the criteria for a
2 waiver under paragraph (1).

3 (3) AGENCIES OF THE LEGISLATIVE BRANCH.—

4 After consultation with the Administrator, and after
5 providing public notice and reasonable opportunity
6 for public review and comment, the appropriate en-
7 tity or individual referred to in subparagraphs (A)
8 through (C) of subsection (b)(2) may, on the basis
9 of the criteria for a waiver referred to in paragraph
10 (1), make such modifications to the nonsmoking pol-
11 icy required to be carried out pursuant to subsection
12 (b) as the entity or individual determines to be nec-
13 essary. The entity or individual may not make any
14 modification that violates the criteria for a waiver
15 under paragraph (1).

16 (d) COLLECTIVE BARGAINING AGREEMENTS.—

17 (1) IN GENERAL.—In a Federal agency in
18 which a labor organization has been accorded rec-
19 ognition as a bargaining unit pursuant to chapter 71
20 of title 5, United States Code, the Federal agency
21 shall engage in collective bargaining pursuant to sec-
22 tion 7114 of title 5, United States Code, to ensure
23 the implementation of the requirements of this sec-
24 tion that affect work areas predominately occupied
25 by the employees represented by the labor organiza-

1 tion by the date of the adoption, pursuant to this
2 section, of a nonsmoking policy applicable to the
3 Federal agency.

4 (2) EXEMPTION.—

5 (A) IN GENERAL.—If, on the date of en-
6 actment of this Act—

7 (i) a bargaining unit referred to in
8 paragraph (1) has in effect a collective
9 bargaining agreement with respect to
10 which a Federal agency is a party; and

11 (ii) the collective bargaining agree-
12 ment referred to in clause (i) includes pro-
13 visions relating to smoking privileges that
14 are in violation of the requirements of this
15 section,

16 the head of the Federal agency may exempt
17 work areas predominately occupied by the em-
18 ployees subject to the collective bargaining
19 agreement from the nonsmoking policy that the
20 Federal agency is required to be carried out
21 under subsection (b).

22 (B) TERMINATION OF EXEMPTION.—

23 (i) IN GENERAL.—An exemption re-
24 ferred to in subparagraph (A) shall termi-
25 nate on the earlier of—

1 (I) the first expiration date (after
2 the date of enactment of this Act) of
3 the collecting bargaining agreement
4 containing the provisions relating to
5 smoking privileges; or

6 (II) the date that is 1 year after
7 the date of issuance of the guidelines.

8 (ii) IMPLEMENTATION OF NON-
9 SMOKING POLICY AFTER TERMINATION
10 DATE.— By the applicable date specified in
11 clause (i)(II), the head of each Federal
12 agency shall be required to enforce a non-
13 smoking policy that meets the require-
14 ments of the guidelines issued under sub-
15 section (a) in each work area under the ju-
16 risdiction of the head of the Federal agen-
17 cy, notwithstanding any collective bargain-
18 ing agreement that contains provisions
19 that are less restrictive than the non-
20 smoking policy.

21 **SEC. 5. TECHNICAL ASSISTANCE AND OUTREACH ACTIVI-**
22 **TIES.**

23 (a) TECHNICAL ASSISTANCE.—The Administrator
24 and the Secretary shall provide technical assistance to the
25 heads of Federal agencies and other persons who request

1 technical assistance. The technical assistance shall include
2 information—

3 (1) on smoking cessation programs for employ-
4 ees; and

5 (2) to assist in compliance with the require-
6 ments of this Act.

7 (b) OUTREACH ACTIVITIES.—

8 (1) IN GENERAL.—The Administrator, in con-
9 sultation with the Secretary, shall establish an out-
10 reach program to inform the public concerning the
11 dangers of environmental tobacco smoke. As part of
12 the outreach program, the Administrator and the
13 Secretary shall make available to the general public
14 brochures and other educational materials. In estab-
15 lishing the programs under this paragraph, the Ad-
16 ministrator and the Secretary shall cooperate to
17 maximize the sharing of information and resources.

18 (2) ENVIRONMENTAL TOBACCO SMOKE ADVI-
19 SORY OFFICE.—

20 (A) IN GENERAL.—The Administrator
21 shall establish within the Office of Radiation
22 and Indoor Air of the Environmental Protection
23 Agency an office, to be known as the “Environ-
24 mental Tobacco Smoke Advisory Office”. The

1 Administrator shall appoint a Director to carry
2 out the functions of the office.

3 (B) DUTIES OF THE DIRECTOR.—The Di-
4 rector shall—

5 (i) provide information on smoking
6 cessation;

7 (ii) provide information to assist in
8 compliance with the requirements of this
9 Act;

10 (iii) provide information on the dan-
11 gers of environmental tobacco smoke to
12 any person who requests the information;

13 (iv) establish a telephone hotline to
14 provide information on the dangers of envi-
15 ronmental tobacco smoke; and

16 (v) carry out any other function of the
17 Office that the Administrator determines
18 to be appropriate.

19 **SEC. 6. FEDERALLY FUNDED PROGRAMS.**

20 (a) IN GENERAL.—Notwithstanding any other provi-
21 sion of law, each person who uses Federal funds to provide
22 children's services shall establish and make a good-faith
23 effort to enforce a nonsmoking policy that meets or ex-
24 ceeds the requirements of subsection (b).

25 (b) NONSMOKING POLICY.—

1 (1) GENERAL REQUIREMENTS.—A nonsmoking
2 policy meets the requirements of this subsection if
3 the policy—

4 (A) is consistent with the guidelines issued
5 under section 4(a);

6 (B) prohibits smoking in each portion of
7 an indoor facility used in connection with the
8 provision of services directly to children; and

9 (C) where appropriate, requires that signs
10 stating that smoking is not permitted be posted
11 in each indoor facility to communicate the
12 policy.

13 (2) PERMISSIBLE FEATURES.—A nonsmoking
14 policy that meets the requirements of this subsection
15 may allow smoking in those portions of the facility—

16 (A) in which services are not normally pro-
17 vided directly to children; and

18 (B) that are ventilated separately from
19 those portions of the facility in which services
20 are normally provided directly to children.

21 (c) WAIVER.—

22 (1) IN GENERAL.—A person described in sub-
23 section (a) may publicly petition the head of the
24 Federal agency from which the person receives Fed-
25 eral funds (including financial assistance) for a

1 waiver from any or all of the requirements of sub-
2 section (b).

3 (2) CONDITIONS FOR GRANTING A WAIVER.—
4 Except as provided in paragraph (3), the head of the
5 Federal agency may grant a waiver only—

6 (A) after consulting with the Adminis-
7 trator, and receiving the concurrence of the
8 Administrator;

9 (B) after giving an opportunity for public
10 hearing (at the main office of the Federal agen-
11 cy or at any regional office of the agency) and
12 comment; and

13 (C) if the person requesting the waiver
14 provides assurances that are satisfactory to the
15 head of the Federal agency (with the concur-
16 rence of the Administrator) that—

17 (i) unusual extenuating circumstances
18 prevent the person from establishing or en-
19 forcing the nonsmoking policy (or a re-
20 quirement under the policy) referred to in
21 subsection (b) (including a case in which
22 the person shares space in an indoor facil-
23 ity with another entity and cannot obtain
24 an agreement with the other entity to
25 abide by the nonsmoking policy require-

1 ment) and the person will establish and
2 make a good-faith effort to enforce an al-
3 ternative nonsmoking policy (or alternative
4 requirement under the policy) that will
5 protect children from exposure to environ-
6 mental tobacco smoke to the maximum ex-
7 tent possible; or

8 (ii) the person requesting the waiver
9 will establish and make a good-faith effort
10 to enforce an alternative nonsmoking pol-
11 icy (or alternative requirement under the
12 policy) that will protect children from ex-
13 posure to environmental tobacco smoke to
14 the same degree as the policy (or require-
15 ment) under subsection (b).

16 (3) SPECIAL WAIVER.—

17 (A) IN GENERAL.—On receipt of an appli-
18 cation, the head of the Federal agency may
19 grant a special waiver to a person described in
20 subsection (a) who employs individuals who are
21 members of a labor organization and provide
22 children’s services pursuant to a collective bar-
23 gaining agreement that—

24 (i) took effect before the date of en-
25 actment of this Act; and

1 (ii) includes provisions relating to
2 smoking privileges that are in violation of
3 the requirements of this section.

4 (B) TERMINATION OF WAIVER.—A special
5 waiver granted under this paragraph shall ter-
6minate on the earlier of—

7 (i) the first expiration date (after the
8 date of enactment of this Act) of the col-
9 lective bargaining agreement containing
10 the provisions relating to smoking privi-
11 leges; or

12 (ii) the date that is 1 year after the
13 date specified in subsection (f).

14 (d) CIVIL PENALTIES.—

15 (1) IN GENERAL.—Any person subject to the
16 requirements of this section who fails to comply with
17 the requirements shall be liable to the United States
18 for a civil penalty in an amount not to exceed
19 \$1,000 for each violation, but in no case shall the
20 amount be in excess of the amount of Federal funds
21 received by the person for the provision of children's
22 services for the fiscal year in which the violation oc-
23 curred. Each day a violation continues shall con-
24 stitute a separate violation.

1 (2) ASSESSMENT.—A civil penalty for a viola-
2 tion of this section shall be assessed by the head of
3 the Federal agency that provided Federal funds (in-
4 cluding financial assistance) to the person (or if the
5 head of the Federal agency does not have the au-
6 thority to issue an order, the appropriate official) by
7 an order made on the record after opportunity for
8 a hearing in accordance with section 554 of title 5,
9 United States Code. Before issuing the order, the
10 head of the Federal agency (or the appropriate offi-
11 cial) shall—

12 (A) give written notice to the person to be
13 assessed a civil penalty under the order of the
14 proposal to issue the order; and

15 (B) provide the person an opportunity to
16 request, not later than 15 days after the date
17 of receipt of the notice, a hearing on the order.

18 (3) AMOUNT OF CIVIL PENALTY.—In determin-
19 ing the amount of a civil penalty under this sub-
20 section, the head of the Federal agency (or the ap-
21 propriate official) shall take into account—

22 (A) the nature, circumstances, extent, and
23 gravity of the violation;

24 (B) with respect to the violator, the ability
25 to pay, the effect of the penalty on the ability

1 to continue operation, any prior history of the
2 same kind of violation, the degree of culpability,
3 and a demonstration of willingness to comply
4 with the requirements of this Act; and

5 (C) such other matters as justice may
6 require.

7 (4) MODIFICATION.—The head of the Federal
8 agency (or the appropriate official) may compromise,
9 modify, or remit, with or without conditions, any
10 civil penalty that may be imposed under this sub-
11 section. The amount of the penalty as finally deter-
12 mined or agreed upon in compromise may be de-
13 ducted from any sums that the United States owes
14 to the person against whom the penalty is assessed.

15 (5) PETITION FOR REVIEW.—A person who has
16 requested a hearing concerning the assessment of a
17 penalty pursuant to paragraph (2) and is aggrieved
18 by an order assessing a civil penalty may file a peti-
19 tion for judicial review of the order with the United
20 States Court of Appeals for the District of Columbia
21 Circuit or for any other circuit in which the person
22 resides or transacts business. The petition may only
23 be filed during the 30-day period beginning on the
24 date of issuance of the order making the assessment.

1 (6) FAILURE TO PAY.—If a person fails to pay
2 an assessment of a civil penalty—

3 (A) after the order making the assessment
4 has become a final order and without filing a
5 petition for judicial review in accordance with
6 paragraph (5); or

7 (B) after a court has entered a final judg-
8 ment in favor of the head of the Federal agency
9 (or appropriate official),

10 the Attorney General shall recover the amount as-
11 sessed (plus interest at currently prevailing rates
12 from the last day of the 30-day period referred to
13 in paragraph (5) or the date of the final judgment,
14 as the case may be) in an action brought in an ap-
15 propriate district court of the United States. In the
16 action, the validity, amount, and appropriateness of
17 the penalty shall not be subject to review.

18 (e) EXEMPTION.—This section shall not apply to a
19 person who provides children’s services who—

20 (1) has attained the age of 18;

21 (2) provides children’s services—

22 (A) in a private residence; and

23 (B) only to children who are, by affinity or
24 consanguinity, or by court decree, a grandchild,
25 niece, or nephew of the provider; and

1 (3) is registered and complies with any State
2 requirements that govern the children’s services pro-
3 vided.

4 (f) EFFECTIVE DATE.—This section shall take effect
5 on the first day of the first fiscal year beginning after the
6 date of enactment of this Act.

7 **SEC. 7. REPORT BY THE ADMINISTRATOR.**

8 Not later than 2 years after the date of enactment
9 of this Act, the Administrator shall submit a report to
10 Congress that includes—

11 (1) information concerning the degree of com-
12 pliance with this Act; and

13 (2) an assessment of the legal status of smok-
14 ing in public places.

15 **SEC. 8. PREEMPTION.**

16 Nothing in this Act is intended to preempt any provi-
17 sion of law of a State or political subdivision of a State
18 that is more restrictive than a provision of this Act.

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