

114TH CONGRESS
1ST SESSION

S. 430

To prohibit the marketing of electronic cigarettes to children, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2015

Mrs. BOXER (for herself, Mr. BLUMENTHAL, Mr. BROWN, Mr. DURBIN, Mr. MARKEY, Mr. MERKLEY, Mr. NELSON, Mr. SCHUMER, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit the marketing of electronic cigarettes to children,
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 “Protecting Children
5 from Electronic Cigarette Advertising Act of 2015”.

6 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) According to the Food and Drug Adminis-
2 tration, because electronic cigarettes have not been
3 fully studied, consumers currently do not know—

4 (A) the potential risks of electronic ciga-
5 rettes when used as intended;

6 (B) how much nicotine or other potentially
7 harmful chemicals are being inhaled during use;
8 or

9 (C) if there are any benefits associated
10 with using these products.

11 (2) Most electronic cigarettes contain widely
12 varying levels of nicotine, which is a highly addictive
13 drug that impacts the cardiovascular system and can
14 be lethal when delivered in high doses.

15 (3) According to the Surgeon General, adoles-
16 cents are particularly vulnerable to the adverse ef-
17 fects of nicotine and adolescent exposure to nicotine
18 may have lasting adverse consequences for brain de-
19 velopment.

20 (4) Use of electronic cigarettes has risen in
21 youth according to a study by the Centers for Dis-
22 ease Control and Prevention that was released in
23 November 2014, which found that in two years,
24 from 2011 to 2013, the percentage of middle and

1 high school students who had ever used electronic
2 cigarettes tripled.

3 (5) Electronic cigarette use may lead children
4 to become addicted to nicotine and could be a gate-
5 way to various tobacco products.

6 (6) Marketing of electronic cigarettes to youth
7 is occurring in the form of advertising using car-
8 toons and sponsorships of events popular with youth
9 such as concerts and sporting events.

10 (7) According to a study published in June
11 2014 in the journal Pediatrics, youth exposure to
12 television advertisements for electronic cigarettes in-
13 creased by 256 percent during the 2011 to 2013 pe-
14 riod, exposing 24,000,000 children to such advertise-
15 ments.

16 (b) SENSE OF CONGRESS.—It is the sense of Con-
17 gress that the Federal Trade Commission should prohibit
18 the advertising, promoting, and marketing in commerce
19 of electronic cigarettes to children as an unfair or decep-
20 tive act or practice, in order to protect the health of the
21 youth of the United States.

22 **SEC. 3. PROHIBITION ON MARKETING OF ELECTRONIC**
23 **CIGARETTES TO CHILDREN.**

24 (a) ELECTRONIC CIGARETTE DEFINED.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graph (2), in this section, the term “electronic ciga-
 3 rette” means any electronic device that delivers nico-
 4 tine, flavor, or other chemicals via a vaporized solu-
 5 tion to the user inhaling from the device, including
 6 any component, liquid, part, or accessory of such a
 7 device, whether or not sold separately.

8 (2) EXCEPTION.—In this section, the term
 9 “electronic cigarette” shall not include any product
 10 that—

11 (A) has been approved by the Food and
 12 Drug Administration for sale as a tobacco ces-
 13 sation product or for other therapeutic pur-
 14 poses; and

15 (B) is marketed and sold solely for a pur-
 16 pose approved as described in subparagraph
 17 (A).

18 (b) PROHIBITION.—

19 (1) IN GENERAL.—No person may advertise,
 20 promote, or market in commerce in a State de-
 21 scribed in paragraph (2) an electronic cigarette in a
 22 manner that—

23 (A) the person knows or should know is
 24 likely to contribute towards initiating or in-

1 creasing the use of electronic cigarettes by chil-
2 dren who are younger than 18 years of age; or

3 (B) the Federal Trade Commission deter-
4 mines, regardless of when or where the adver-
5 tising, promotion, or marketing occurs, affects
6 or appeals to children described in subpara-
7 graph (A).

8 (2) COVERED STATES.—A State described in
9 this paragraph is a State in which the sale of an
10 electronic cigarette to a child who is younger than
11 18 years of age is prohibited by a provision of Fed-
12 eral or State law.

13 (c) ENFORCEMENT BY FEDERAL TRADE COMMIS-
14 SION.—

15 (1) UNFAIR OR DECEPTIVE ACT OR PRAC-
16 TICE.—A violation of subsection (b)(1) shall be
17 treated as a violation of a rule defining an unfair or
18 deceptive act or practice described under section
19 18(a)(1)(B) of the Federal Trade Commission Act
20 (15 U.S.C. 57a(a)(1)(B)).

21 (2) POWERS OF COMMISSION.—

22 (A) IN GENERAL.—The Federal Trade
23 Commission shall enforce this section in the
24 same manner, by the same means, and with the
25 same jurisdiction, powers, and duties as though

all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

(B) PRIVILEGES AND IMMUNITIES.—Any person who violates this section shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(C) RULEMAKING.—The Federal Trade Commission shall promulgate standards and rules to carry out this section in accordance with section 553 of title 5, United States Code.

(d) ENFORCEMENT BY STATES.—

(1) IN GENERAL.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to subsection (b)(1) in a practice that violates such subsection, the attorney general of the State may, as *parens patriae*, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States—

1 (A) to enjoin further violation of such sub-
 2 section by such person;

3 (B) to compel compliance with such sub-
 4 section;

5 (C) to obtain damages, restitution, or other
 6 compensation on behalf of such residents;

7 (D) to obtain such other relief as the court
 8 considers appropriate; or

9 (E) to obtain civil penalties in the amount
 10 determined under paragraph (2).

11 (2) CIVIL PENALTIES.—

12 (A) CALCULATION.—For purposes of im-
 13 posing a civil penalty under paragraph (1)(E)
 14 with respect to a person who violates subsection
 15 (b)(1), the amount determined under this para-
 16 graph is the amount calculated by multiplying
 17 the number of days that the person is not in
 18 compliance with subsection (b)(1) by an amount
 19 not greater than \$16,000.

20 (B) ADJUSTMENT FOR INFLATION.—Be-
 21 ginning on the date on which the Bureau of
 22 Labor Statistics first publishes the Consumer
 23 Price Index after the date that is 1 year after
 24 the date of the enactment of this Act, and an-
 25 nually thereafter, the amounts specified in sub-

paragraph (A) shall be increased by the percentage increase in the Consumer Price Index published on that date from the Consumer Price Index published the previous year.

(3) RIGHTS OF FEDERAL TRADE COMMISSION.—

(A) NOTICE TO FEDERAL TRADE COMMISSION.—

(i) IN GENERAL.—Except as provided in clause (iii), the attorney general of a State shall notify the Federal Trade Commission in writing that the attorney general intends to bring a civil action under paragraph (1) not later than 10 days before initiating the civil action.

(ii) CONTENTS.—The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.

(iii) EXCEPTION.—If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify

1 the Federal Trade Commission imme-
2 diately upon instituting the civil action.

3 (B) INTERVENTION BY FEDERAL TRADE
4 COMMISSION.—The Federal Trade Commission
5 may—

6 (i) intervene in any civil action
7 brought by the attorney general of a State
8 under paragraph (1); and

9 (ii) upon intervening—

10 (I) be heard on all matters aris-
11 ing in the civil action; and

12 (II) file petitions for appeal of a
13 decision in the civil action.

14 (4) INVESTIGATORY POWERS.—Nothing in this
15 subsection may be construed to prevent the attorney
16 general of a State from exercising the powers con-
17 ferred on the attorney general by the laws of the
18 State to conduct investigations, to administer oaths
19 or affirmations, or to compel the attendance of wit-
20 nesses or the production of documentary or other
21 evidence.

22 (5) PREEMPTIVE ACTION BY FEDERAL TRADE
23 COMMISSION.—If the Federal Trade Commission in-
24 stitutes a civil action or an administrative action
25 with respect to a violation of subsection (b)(1), the

1 attorney general of a State may not, during the
 2 pendency of such action, bring a civil action under
 3 paragraph (1) against any defendant named in the
 4 complaint of the Commission for the violation with
 5 respect to which the Commission instituted such ac-
 6 tion.

7 (6) VENUE; SERVICE OF PROCESS.—

8 (A) VENUE.—Any action brought under
 9 paragraph (1) may be brought in—

10 (i) the district court of the United
 11 States that meets applicable requirements
 12 relating to venue under section 1391 of
 13 title 28, United States Code; or

14 (ii) another court of competent juris-
 15 diction.

16 (B) SERVICE OF PROCESS.—In an action
 17 brought under paragraph (1), process may be
 18 served in any district in which the defendant—

19 (i) is an inhabitant; or

20 (ii) may be found.

21 (7) ACTIONS BY OTHER STATE OFFICIALS.—

22 (A) IN GENERAL.—In addition to civil ac-
 23 tions brought by attorneys general under para-
 24 graph (1), any other officer of a State who is
 25 authorized by the State to do so may bring a

1 civil action under paragraph (1), subject to the
2 same requirements and limitations that apply
3 under this subsection to civil actions brought by
4 attorneys general.

5 (B) SAVINGS PROVISION.—Nothing in this
6 subsection may be construed to prohibit an au-
7 thorized official of a State from initiating or
8 continuing any proceeding in a court of the
9 State for a violation of any civil or criminal law
10 of the State.

11 (e) CONSTRUCTION.—Nothing in this section shall be
12 construed to limit or diminish the authority of the Food
13 and Drug Administration to regulate the marketing of
14 electronic cigarettes, including the marketing of electronic
15 cigarettes to children.

16 (f) RELATION TO STATE LAW.—This section shall
17 not be construed as superseding, altering, or affecting any
18 provision of law of a State, except to the extent that such
19 provision of law is inconsistent with the provisions of this
20 section, and then only to the extent of the inconsistency.

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