

116TH CONGRESS
1ST SESSION

H. R. 1498

To impose additional restrictions on tobacco flavors for use in e-cigarettes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2019

Ms. DEGETTE (for herself and Mr. RASKIN) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

To impose additional restrictions on tobacco flavors for use
in e-cigarettes.

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 “Stopping Appealing
5 Flavors in E-Cigarettes for Kids Act” or the “SAFE Kids
6 Act”.

7 **SEC. 2. FINDINGS.**

8 Congress finds as follows:

9 (1) Tobacco use almost always begins during
10 adolescence and, because nicotine is addictive, most

1 youth tobacco users continue to use tobacco as
2 adults, even if they intended to quit.

3 (2) According to the Surgeon General, “The
4 use of products containing nicotine in any form
5 among youth, including e-cigarettes, is unsafe” and
6 “Nicotine exposure during adolescence can cause ad-
7 diction and can harm the developing brain”.

8 (3) In 2018, youth e-cigarette use increased by
9 78 percent among high school students and by 48
10 percent among middle school students. More than
11 3.6 million youth currently use e-cigarettes, an in-
12 crease of 1.5 million high school and middle school
13 students in one year.

14 (4) In 2018, 28 percent of high school e-ciga-
15 rette users and 16 percent of middle school e-ciga-
16 rette users reported frequent use of e-cigarettes,
17 using e-cigarettes on at least 20 of the preceding 30
18 days.

19 (5) Rising youth use of e-cigarettes is hindering
20 progress in reducing youth tobacco use. The use of
21 any tobacco product increased by 38 percent among
22 high school students and 29 percent among middle
23 school students between 2017 and 2018.

1 (6) Both the Surgeon General and the Commis-
2 sioner of Food and Drugs have called the recent
3 surge in youth e-cigarettes use an “epidemic”.

4 (7) The Surgeon General in 2018 issued an ad-
5 visory emphasizing the need to take immediate ac-
6 tion to stem the youth e-cigarette epidemic and to
7 protect kids from a lifetime of nicotine addiction and
8 related health risks.

9 (8) Youth use of cigars is a public health con-
10 cern. High school boys smoke cigars at a higher rate
11 than cigarettes (9 percent for cigars and 7.6 percent
12 for cigarettes).

13 (9) Flavors play a significant role in attracting
14 kids to tobacco products and make them easier to
15 use by masking the harshness of tobacco products.

16 (10) A 2017 study identified more than 15,000
17 unique e-cigarette flavors available online. E-ciga-
18 rettes come in flavors such as gummy bear, cotton
19 candy, and fruit loops.

20 (11) The number of unique cigar flavor names
21 more than doubled, from 108 to 250, between 2008
22 and 2015, and flavored cigars made up more than
23 half of the convenience store cigar market in 2015.
24 Cigars come in flavors such as chocolate, water-

1 melon, and tropical fusion and are sold in conven-
2 ience stores for as little as 3 for 99 cents.

3 (12) Youth often begin tobacco use with a fla-
4 vored product. Eighty-one percent of youth who have
5 ever used a tobacco product started with a flavored
6 tobacco product.

7 (13) Flavors are a primary reason why youth
8 use e-cigarettes and cigars. Eighty-two percent of
9 current youth e-cigarette users and 74 percent of
10 current youth cigar smokers said they used these
11 products “because they come in flavors I like”.

12 (14) In 2018, the Food and Drug Administra-
13 tion (FDA) and the Federal Trade Commission
14 (FTC) took action against some deceptive e-liquid
15 products that look like kid-friendly juice boxes, cook-
16 ies, and candy. Many similar products remain on the
17 market.

18 (15) The American Association of Poison Con-
19 trol Centers reported more than 3,100 calls in 2018
20 due to exposure to e-liquids, and the American
21 Academy of Pediatrics has warned about the dan-
22 gers of accidental poisonings because of the appeal
23 of the packaging of flavored products.

24 (16) Curbing the use of flavors in tobacco prod-
25 ucts will help to protect kids from nicotine addiction

1 and tobacco-caused diseases such as cancer, heart
2 disease, and respiratory disease.

3 **SEC. 3. ADDITIONAL RESTRICTIONS ON USE OF TOBACCO**
4 **FLAVORS.**

5 (a) TOBACCO PRODUCT STANDARDS.—Section
6 907(a)(1) of the Federal Food, Drug, and Cosmetic Act
7 (21 U.S.C. 387g) is amended—

8 (1) by redesignating subparagraph (B) as sub-
9 paragraph (C); and

10 (2) by inserting after subparagraph (A) the fol-
11 lowing:

12 “(B) SPECIAL RULE FOR TOBACCO PROD-
13 UCTS OTHER THAN CIGARETTES.—

14 “(i) IN GENERAL.—Except as pro-
15 vided in clause (ii), a tobacco product that
16 is not a cigarette, or any component, part,
17 or accessory of such a product, shall not
18 contain, as a constituent (including a
19 smoke or aerosol constituent) or additive,
20 an artificial or natural flavor (other than
21 tobacco) or an herb or spice (including
22 menthol, strawberry, grape, orange, clove,
23 cinnamon, pineapple, vanilla, coconut, lico-
24 rice, cocoa, chocolate, cherry, and coffee)
25 that is a characterizing flavor of the to-

1 bacco product, tobacco smoke, or aerosol
2 emitted from the product. Nothing in this
3 subparagraph shall be construed to limit
4 the Secretary’s authority to take action
5 under this section or other provisions of
6 this Act applicable to any artificial or nat-
7 ural flavor, herb, or spice not specified in
8 this subparagraph.

9 “(ii) EXCEPTIONS.—An electronic nic-
10 otine delivery system component or part
11 shall not contain or use an artificial or
12 natural flavor (other than tobacco) that is
13 a characterizing flavor of the product or its
14 aerosol unless the Secretary issues an
15 order finding that a manufacturer has
16 demonstrated that use of the character-
17 izing flavor—

18 “(I) will increase the likelihood of
19 smoking cessation among current
20 users of tobacco products;

21 “(II) will not increase the likeli-
22 hood of youth initiation of nicotine or
23 tobacco products; and

1 “(III) will not increase the likeli-
2 hood of harm to the person using the
3 characterizing flavor.”.

4 (b) DEFINITIONS.—Section 900 of the Federal Food,
5 Drug, and Cosmetic Act (21 U.S.C. 387) is amended—

6 (1) by redesignating paragraphs (8) through
7 (22) as paragraphs (9) through (23); and

8 (2) by inserting after paragraph (7) the fol-
9 lowing:

10 “(8) ELECTRONIC NICOTINE DELIVERY SYS-
11 TEM.—The term ‘electronic nicotine delivery sys-
12 tem’—

13 “(A) means any electronic device that de-
14 livers nicotine, flavor, or another substance via
15 an aerosolized solution to the user inhaling
16 from the device (including e-cigarettes, e-hook-
17 ah, e-cigars, vape pens, advanced refillable per-
18 sonal vaporizers, and electronic pipes) and any
19 component, liquid, part, or accessory of such a
20 device, whether or not sold separately; and

21 “(B) does not include a product that—

22 “(i) is approved by the Food and
23 Drug Administration for sale as a tobacco
24 cessation product or for another thera-
25 peutic purpose; and

1 “(ii) is marketed and sold solely for a
2 purpose described in clause (i).”.

3 (c) CONFORMING AMENDMENT.—Section 9(1) of the
4 Comprehensive Smokeless Tobacco Health Education Act
5 of 1986 (15 U.S.C. 4408(1)) is amended by striking “sec-
6 tion 900(18)” and inserting “section 900(19)”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect 1 year after the date of enact-
9 ment of this Act.

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