

116TH CONGRESS
2D SESSION

S. 3174

To amend the Federal Food, Drug, and Cosmetic Act with respect to the sale and marketing of tobacco products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2020

Mr. BROWN (for himself, Mr. MERKLEY, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Mr. MARKEY, Mr. DURBIN, Mr. REED, Mr. CARDIN, and Ms. HARRIS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Federal Food, Drug, and Cosmetic Act with respect to the sale and marketing of tobacco products, 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 “Reversing the Youth
5 Tobacco Epidemic Act of 2020”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—FOOD AND DRUG ADMINISTRATION

- Sec. 101. Cigarette graphic health warnings.
- Sec. 102. Advertising and sales parity for all deemed tobacco products.
- Sec. 103. Reducing child and adolescent nicotine addiction.
- Sec. 104. Fees applicable to all tobacco products.
- Sec. 105. Regulation of products containing synthetic nicotine.
- Sec. 106. Update to youth tobacco prevention public awareness campaigns.
- Sec. 107. Public education.

TITLE II—FEDERAL TRADE COMMISSION

- Sec. 201. Advertising of tobacco products.

TITLE III—PUBLIC HEALTH PROGRAMS

- Sec. 301. Outreach to medically underserved communities.
- Sec. 302. Demonstration grant program to develop strategies for smoking cessation in medically underserved communities.

TITLE IV—NICOTINE OR VAPING ACCESS PROTECTION AND ENFORCEMENT

- Sec. 401. Increasing civil penalties applicable to certain violations of restrictions on sale and distribution of tobacco products.
- Sec. 402. Study and report on e-cigarettes.

TITLE I—FOOD AND DRUG ADMINISTRATION

SEC. 101. CIGARETTE GRAPHIC HEALTH WARNINGS.

(a) ISSUANCE DEADLINES.—Not later than March 15, 2020, the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall publish a final rule pursuant to the first subsection (d) of section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333). If the Secretary fails to promulgate such final rule by March 15, 2020, the proposed rule entitled “Tobacco Products; Required Warnings for Cigarette Packages and Advertisements” (84 Fed. Reg. 42754 (August 16, 2019)) shall be treated as a final rule beginning on March 16, 2020.

1 (b) CONFORMING CHANGE.—The first subsection (d)
 2 of section 4 of the Federal Cigarette Labeling and Adver-
 3 tising Act (15 U.S.C. 1333) is amended by striking “Not
 4 later than 24 months after the date of enactment of the
 5 Family Smoking Prevention and Tobacco Control Act, the
 6 Secretary” and inserting “The Secretary”.

7 **SEC. 102. ADVERTISING AND SALES PARITY FOR ALL**
 8 **DEEMED TOBACCO PRODUCTS.**

9 (a) IN GENERAL.—Not later than 1 year after the
 10 date of enactment of this Act, the Secretary of Health and
 11 Human Services, acting through the Commissioner of
 12 Food and Drugs, shall promulgate a final rule amending
 13 part 1140 of subchapter K of title 21, Code of Federal
 14 Regulations (or any corresponding similar regulation or
 15 ruling)—

16 (1) to apply the provisions of such part 1140
 17 (or any corresponding similar regulation or ruling)
 18 to all tobacco products, as applicable, to which chap-
 19 ter IX of the Federal Food, Drug, and Cosmetic Act
 20 (21 U.S.C. 387 et seq.) applies pursuant to section
 21 901(b) of such Act (21 U.S.C. 387a(b)), as amended
 22 by section 103(a) of this Act; and

23 (2) to make such changes as may be necessary
 24 for applicability to specific tobacco products and

1 consistency with the amendments made by section
2 103 of this Act.

3 (b) EFFECTIVE DATE.—The final rule required by
4 subsection (a) shall take effect on the date that is 2 years
5 after the date of enactment of this Act.

6 **SEC. 103. REDUCING CHILD AND ADOLESCENT NICOTINE**
7 **ADDICTION.**

8 (a) APPLICABILITY TO ALL TOBACCO PRODUCTS.—

9 (1) IN GENERAL.—Subsection (b) of section
10 901 of the Federal Food, Drug, and Cosmetic Act
11 (21 U.S.C. 387a) is amended to read as follows:

12 “(b) APPLICABILITY.—This chapter shall apply to all
13 tobacco products.”.

14 (2) RULE OF CONSTRUCTION.—Section 901(b)
15 of the Federal Food, Drug, and Cosmetic Act (21
16 U.S.C. 387a(b)), as amended by paragraph (1), shall
17 not be construed to limit the applicability of chapter
18 IX of the Federal Food, Drug, and Cosmetic Act
19 (21 U.S.C. 387 et seq.) to—

20 (A) products that were listed in section
21 901(b) of such Act as in effect on the day be-
22 fore the date of enactment of this Act; and

23 (B) products that were deemed by regula-
24 tion to be subject to such chapter pursuant to

1 section 901(b) of such Act as in effect on the
 2 day before the date of enactment of this Act.

3 (b) PROHIBITION AGAINST REMOTE RETAIL
 4 SALES.—Paragraph (4) of section 906(d) of the Federal
 5 Food, Drug, and Cosmetic Act (21 U.S.C. 387f(d)) is
 6 amended to read as follows:

7 “(4) PROHIBITION AGAINST REMOTE RETAIL
 8 SALES.—Not later than 2 years after the date of en-
 9 actment of the Reversing the Youth Tobacco Epi-
 10 demic Act of 2020, the Secretary shall promulgate
 11 a final regulation under paragraph (1) prohibiting
 12 the retail sale of all tobacco products and all compo-
 13 nents, parts, and accessories of tobacco products,
 14 other than retail sales through a direct, face-to-face
 15 exchange between a retailer and a consumer.”.

16 (c) PROHIBITING FLAVORING OF TOBACCO PROD-
 17 UCTS.—

18 (1) PROHIBITION.—

19 (A) IN GENERAL.—Subparagraph (A) of
 20 section 907(a)(1) of the Federal Food, Drug,
 21 and Cosmetic Act (21 U.S.C. 387g(a)(1)) is
 22 amended to read as follows:

23 “(A) SPECIAL RULES.—

24 “(i) IN GENERAL.—A tobacco product
 25 (including its components, parts, and ac-

cessories, including the tobacco, filter, or paper) that is not an electronic nicotine delivery system shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco) that is a characterizing flavor of the tobacco product or tobacco smoke or an herb or spice, including menthol, mint, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee.

“(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to limit the Secretary’s authority to take action under this section or other sections of this Act applicable to any artificial or natural flavor, herb, or spice.

“(iii) APPLICABILITY TO CERTAIN INDIVIDUALS.—Notwithstanding any provision of this Act, no individual who purchases or possess for consumption a tobacco product that is in violation of the prohibition under this subparagraph shall be subject to any criminal penalty under

1 this Act for such purchase or possession,
2 nor shall it be used as a justification to
3 stop, search, or conduct any other inves-
4 tigative measure against any individual.”.

5 (B) EFFECTIVE DATE.—The amendment
6 made by subparagraph (A) shall take effect 1
7 year after the date of enactment of this Act.

8 (2) FLAVORED ELECTRONIC NICOTINE DELIV-
9 ERY SYSTEM.—Section 910 of the Federal Food,
10 Drug, and Cosmetic Act (21 U.S.C. 387j) is amend-
11 ed by inserting at the end the following:

12 “(h) FLAVORED ELECTRONIC NICOTINE DELIVERY
13 SYSTEMS.—

14 “(1) RESTRICTION.—Beginning on the date
15 that is 30 days after the date of enactment of the
16 Reversing the Youth Tobacco Epidemic Act of 2020,
17 any flavored electronic nicotine delivery system that
18 is a new tobacco product, including any liquid, solu-
19 tion, or other component or part or its aerosol, shall
20 not contain an artificial or natural flavor (other than
21 tobacco) that is a characterizing flavor, including
22 menthol, mint, strawberry, grape, orange, clove, cin-
23 namon, pineapple, vanilla, coconut, licorice, cocoa,
24 chocolate, cherry, or coffee, unless the Secretary has
25 issued a marketing order as described in paragraph

1 (2). Nothing in this paragraph shall be construed to
2 limit the Secretary's authority to take action under
3 this section or other sections of this Act applicable
4 to any artificial or natural flavor, herb, or spice.

5 “(2) REVIEW.—The Secretary shall not issue a
6 marketing order under subsection (c)(1)(A)(i) or a
7 substantial equivalence order under subsection
8 (a)(2)(A)(i) for any electronic nicotine delivery sys-
9 tem, including any liquid, solution, or other compo-
10 nent or part or its aerosol, that contains an artificial
11 or natural flavor (other than tobacco) that is a char-
12 acterizing flavor, unless the Secretary issues an
13 order finding that the manufacturer has dem-
14 onstrated that—

15 “(A) use of the characterizing flavor—

16 “(i) will significantly increase the like-
17 lihood of smoking cessation among current
18 users of tobacco products; and

19 “(ii) will not increase the likelihood
20 that individuals who do not use tobacco
21 products, including youth, will start using
22 any tobacco product, including an elec-
23 tronic nicotine delivery system; and

24 “(B) such electronic nicotine delivery sys-
25 tem is not more harmful to users than an elec-

1 tronic nicotine delivery system that does not
2 contain any characterizing flavors.”.

3 (3) DEFINITION OF ELECTRONIC NICOTINE DE-
4 LIVERY SYSTEM.—Section 900 of the Federal Food,
5 Drug, and Cosmetic Act (21 U.S.C. 387) is amend-
6 ed—

7 (A) by redesignating paragraphs (8)
8 through (22) as paragraphs (9) through (23),
9 respectively; and

10 (B) by inserting after paragraph (7) the
11 following new paragraph:

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

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

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

24 “(i) is approved by the Food and
25 Drug Administration for sale as a tobacco

cessation product or for another therapeutic purpose; and

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

SEC. 104. FEES APPLICABLE TO ALL TOBACCO PRODUCTS.

(a) INCREASE IN TOTAL AMOUNT.—Section 919(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387s(b)(1)) is amended by striking subparagraph (K) and inserting the following subparagraphs:

“(K) For fiscal year 2019, \$712,000,000.

“(L) For fiscal year 2020, \$812,000,000.

“(M) For each subsequent fiscal year, the amount that was applicable for the previous fiscal year, adjusted by the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending June 30 preceding the fiscal year.”.

(b) APPLICATION OF USER FEES TO ALL CLASSES OF TOBACCO PRODUCTS.—

(1) IN GENERAL.—Subparagraph (A) of section 919(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387s(b)(2)) is amended to read as follows:

1 “(A) IN GENERAL.—

2 “(i) FISCAL YEARS 2020 AND 2021.—
3 For fiscal years 2020 and 2021, user fees
4 shall be assessed and collected under sub-
5 section (a) only with respect to the classes
6 of tobacco products listed in subparagraph
7 (B)(i), and the total such user fees with re-
8 spect to each such class shall be an
9 amount that is equal to the applicable per-
10 centage of each such class for the fiscal
11 year multiplied by the amount specified in
12 paragraph (1) for the fiscal year.

13 “(ii) SUBSEQUENT FISCAL YEARS.—
14 For fiscal year 2022 and each subsequent
15 fiscal year, user fees shall be assessed and
16 collected under subsection (a) with respect
17 to each class of tobacco products to which
18 this chapter applies, and the total user fees
19 with respect to each class shall be—

20 “(I) with respect to each class of
21 tobacco products listed in subpara-
22 graph (B)(i), an amount that is cal-
23 culated in the same way as the
24 amounts calculated for fiscal years
25 2020 and 2021 under clause (i), ex-

cept that for purposes of fiscal years 2022 and subsequent fiscal years, instead of multiplying the applicable percentage of each class by ‘the amount specified in paragraph (1) for the fiscal year’, the applicable percentage shall be multiplied by—

“(aa) the amount specified in paragraph (1) for the fiscal year, reduced by

“(bb) the total user fees assessed and collected pursuant to subclause (II) for the fiscal year; and

“(II) with respect to each class of tobacco products to which this chapter applies but which is not listed in subparagraph (B)(i), an amount determined pursuant to a formula under subparagraph (C).”.

(2) OTHER TOBACCO PRODUCTS.—Section 919(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387s(b)(2)), as amended by paragraph (1), is further amended by adding at the end the following new subparagraphs:

1 “(C) ALLOCATION FOR OTHER TOBACCO
2 PRODUCTS.—

3 “(i) IN GENERAL.—Beginning with
4 fiscal year 2022, the total user fees as-
5 sessed and collected under subsection (a)
6 each fiscal year with respect to each class
7 of tobacco products not listed in subpara-
8 graph (B)(i) shall be an amount that is de-
9 termined pursuant to a formula developed
10 by the Secretary by regulation using infor-
11 mation required to be submitted under
12 subparagraph (D).

13 “(ii) ALLOCATION FOR OTHER TO-
14 BACCO PRODUCTS.—For each class of to-
15 bacco products not listed in subparagraph
16 (B)(i), the percentage of fees under the
17 formula under clause (i) for the respective
18 fiscal year shall be equal to the percentage
19 of the gross domestic sales in the previous
20 calendar year that is attributable to such
21 class of tobacco products in such calendar
22 year, as determined by the Secretary.

23 “(iii) ALLOCATION OF ASSESSMENT
24 WITHIN EACH CLASS OF OTHER TOBACCO
25 PRODUCTS.—The percentage of the total

1 user fee to be paid by each manufacturer
 2 or importer of tobacco products in a class
 3 not listed in subparagraph (B)(i) shall be
 4 determined by the Secretary, based on the
 5 percentage of the gross domestic sales of
 6 all such classes of tobacco products by all
 7 manufacturers and importers in the pre-
 8 vious calendar year that is attributable to
 9 such manufacturer or importer.

10 “(iv) EFFECT OF FAILURE TO FINAL-
 11 IZE FORMULA ON TIME.—If the Secretary
 12 for any reason fails to finalize by fiscal
 13 year 2022 the formula required by this
 14 subparagraph for the assessment and col-
 15 lection of user fees for classes of tobacco
 16 products not listed in subparagraph
 17 (B)(i)—

18 “(I) the Secretary shall continue
 19 to assess and collect fees under sub-
 20 section (a) with respect to each class
 21 of tobacco products listed in subpara-
 22 graph (B)(i); and

23 “(II) until the first fiscal year
 24 commencing after the finalization of
 25 such formula, the exception described

1 in subparagraph (A)(ii)(I) shall not
2 apply.

3 “(v) REVISIONS BY REGULATION.—
4 Any revisions to the formula promulgated
5 pursuant to this subparagraph shall be by
6 regulation.

7 “(vi) DEFINITION.—In this subpara-
8 graph, the term ‘gross domestic sales’
9 means the total value in dollars of the sale
10 or distribution by manufacturers and im-
11 porters of tobacco products in the United
12 States in classes not listed in subpara-
13 graph (B)(i), as determined based on the
14 aggregation of sales data from every man-
15 ufacturer and importer of tobacco products
16 that submits sales data to the Secretary.

17 “(D) INFORMATION REQUIRED TO BE SUB-
18 MITTED.—Each manufacturer or importer of
19 any tobacco product shall submit to the Sec-
20 retary the information required under this sub-
21 paragraph by March 2, 2021, for calendar year
22 2020, by April 1, 2021, for the period of Janu-
23 ary 1, 2021, through March 30, 2021, and
24 monthly thereafter. Such information shall in-
25 clude—

1 “(i) the identification of the manufac-
 2 turer or importer;

3 “(ii) the class or classes of tobacco
 4 products sold by the manufacturer or im-
 5 porter;

6 “(iii) the full listing of the finished to-
 7 bacco products in a class not listed in sub-
 8 paragraph (B)(i) sold or distributed by the
 9 manufacturer or importer in the United
 10 States; and

11 “(iv) the gross domestic sales data for
 12 each class of finished tobacco products sold
 13 or distributed by the manufacturer or im-
 14 porter in the United States.”.

15 (3) PROHIBITED ACT.—Section 301(q)(1)(B) of
 16 the Federal Food, Drug, and Cosmetic Act (21
 17 U.S.C. 331(q)(1)(B)) is amended by inserting
 18 “919(b)(2)(D),” before “or 920”.

19 (c) ALLOCATION OF ASSESSMENT WITHIN EACH
 20 CLASS OF TOBACCO PRODUCT.—Section 919(b)(4) of the
 21 Federal Food, Drug, and Cosmetic Act (21 U.S.C.
 22 387s(b)(4)) is amended by striking “shall be the percent-
 23 age determined for purposes of allocations under sub-
 24 sections (e) through (h) of section 625 of Public Law 108—

1 357” and inserting “shall be the percentage determined
2 by the Secretary”.

3 (d) CONFORMING AMENDMENTS.—Section 919(b) of
4 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
5 387s(b)) is amended—

6 (1) by striking paragraph (5);

7 (2) by redesignating paragraphs (6) and (7) as
8 paragraphs (5) and (6) respectively; and

9 (3) by amending paragraph (6), as so redesign-
10 nated, to read as follows:

11 “(6) MEMORANDUM OF UNDERSTANDING.—The
12 Secretary shall request the appropriate Federal
13 agency to enter into a memorandum of under-
14 standing that provides for the regular and timely
15 transfer from the head of such agency to the Sec-
16 retary of all necessary information regarding all to-
17 bacco product manufacturers and importers required
18 to pay user fees. The Secretary shall maintain all
19 disclosure restrictions established by the head of
20 such agency regarding the information provided
21 under the memorandum of understanding.”.

22 (e) APPLICABILITY.—The amendments made by sub-
23 sections (b), (c), and (d) apply beginning with fiscal year
24 2022. Subject to the amendment made by subsection (a),
25 section 919 of the Federal Food, Drug, and Cosmetic Act

1 (21 U.S.C. 387s), as in effect on the day before the date
 2 of enactment of this Act, shall apply with respect to fiscal
 3 years preceding fiscal year 2022.

4 (f) REPORT.—For fiscal year 2020 and each subse-
 5 quent fiscal year for which fees are collected under section
 6 919 of the Federal Food, Drug, and Cosmetic Act (21
 7 U.S.C. 387s), the Secretary of Health and Human Serv-
 8 ices, acting through the Commissioner of Food and Drugs,
 9 shall, by the end of the respective fiscal year, submit to
 10 Congress financial and performance reports with respect
 11 to such fees.

12 **SEC. 105. REGULATION OF PRODUCTS CONTAINING SYN-**
 13 **THETIC NICOTINE.**

14 (a) IN GENERAL.—The Secretary of Health and
 15 Human Services, acting through the Commissioner of
 16 Food and Drugs, shall—

17 (1) not later than 1 year after the date of en-
 18 actment of this Act, issue an interim final rule pro-
 19 viding for the regulation of products containing syn-
 20 thetic nicotine under the Federal Food, Drug, and
 21 Cosmetic Act (21 U.S.C. 301 et seq.); and

22 (2) not later than 2 years after such date of en-
 23 actment, issue a final rule providing for such regula-
 24 tion.

1 (b) SYNTHETIC NICOTINE DEFINED.—In this sec-
2 tion, the term “synthetic nicotine” means nicotine that is
3 not made or derived from tobacco.

4 **SEC. 106. UPDATE TO YOUTH TOBACCO PREVENTION PUB-**
5 **LIC AWARENESS CAMPAIGNS.**

6 (a) IN GENERAL.—The Secretary of Health and
7 Human Services, acting through the Commissioner of
8 Food and Drugs, shall—

9 (1) review all public health awareness cam-
10 paigns of the Department of Health and Human
11 Services designed to educate at-risk individuals
12 about the harmful effects of tobacco use, including
13 the use of e-cigarettes and other electronic nicotine
14 delivery systems; and

15 (2) as applicable, modify such campaigns to in-
16 clude awareness and education materials designated
17 for individuals who are 18 to 21 years of age.

18 (b) CONSULTATION.—In carrying out subsection (a),
19 the Secretary of Health and Human Services may consult
20 with medical and public health associations and nonprofit
21 organizations.

22 **SEC. 107. PUBLIC EDUCATION.**

23 Section 906 of the Federal Food, Drug, and Cosmetic
24 Act (21 U.S.C. 387f) is amended by adding at the end
25 the following:

1 “(g) EDUCATION ON TOBACCO PRODUCTS.—

2 “(1) IN GENERAL.—Not later than 6 months
3 after the date of the enactment of the Reversing the
4 Youth Tobacco Epidemic Act of 2020, the Secretary
5 shall provide educational materials for health care
6 providers, members of the public, and law enforce-
7 ment officials, regarding—

8 “(A) the authority of the Food and Drug
9 Administration with respect to the regulation of
10 tobacco products (including enforcement of such
11 regulation);

12 “(B) the processes of the Food and Drug
13 Administration for enforcing restrictions on the
14 manufacture and sale of tobacco products;

15 “(C) the prohibition on characterizing fla-
16 vors in tobacco products and the under section
17 907(a)(1) and the exception from such prohibi-
18 tion under subparagraph (C) of such section;

19 “(D) the public health impact of tobacco
20 products with characterizing flavors; and

21 “(E) other information as the Secretary
22 determines appropriate.

23 “(2) CONTENT.—Educational materials pro-
24 vided under paragraph (1) may include—

1 “(A) explanations of key statutory and
2 regulatory terms, including the terms ‘tobacco
3 product’, ‘component parts’, ‘accessories’, ‘con-
4 stituent’, ‘additive’, ‘tobacco product manufac-
5 turer’, and ‘characterizing flavor’;

6 “(B) an explanation of the Food and Drug
7 Administration’s jurisdiction to regulate tobacco
8 products, including tobacco products with char-
9 acterizing flavors under section 907(a)(1);

10 “(C) information related to enforcement
11 tools and processes used by the Food and Drug
12 Administration for violations of the prohibition
13 specified in section 907(a)(1);

14 “(D) an explanation of the health effects
15 of using tobacco products, including those with
16 characterizing flavors; and

17 “(E) information on resources available re-
18 lated to smoking cessation.

19 “(3) FORMAT.—Educational materials provided
20 under paragraph (1) may be—

21 “(A) published in any format, including an
22 Internet website, video, fact sheet, infographic,
23 webinar, or other format, as the Secretary de-
24 termines is appropriate and applicable; and

“(B) tailored for the unique needs of health care providers, members of the public, law enforcement officers, and other audiences, as the Secretary determines appropriate.”.

TITLE II—FEDERAL TRADE COMMISSION

SEC. 201. ADVERTISING OF TOBACCO PRODUCTS.

(a) ADVERTISING OF ELECTRONIC NICOTINE DELIVERY SYSTEMS.—

(1) IN GENERAL.—It shall be unlawful—

(A) to market, advertise, or promote any electronic nicotine delivery system in a manner that appeals to an individual under 21 years of age; or

(B) to market, advertise, promote, or endorse, or to compensate any person for the marketing, advertising, promotion, or endorsement of, any electronic nicotine delivery system without clearly disclosing that the communication is an advertisement, unless the communication is unambiguously identifiable as an advertisement.

(2) ENFORCEMENT BY COMMISSION.—

(A) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of paragraph (1) shall be

1 treated as a violation of a regulation under sec-
 2 tion 18(a)(1)(B) of the Federal Trade Commis-
 3 sion Act (15 U.S.C. 57a(a)(1)(B)) regarding
 4 unfair or deceptive acts or practices.

5 (B) POWERS OF COMMISSION.—The Com-
 6 mission shall enforce paragraph (1) in the same
 7 manner, by the same means, and with the same
 8 jurisdiction, powers, and duties as though all
 9 applicable terms and provisions of the Federal
 10 Trade Commission Act (15 U.S.C. 41 et seq.)
 11 were incorporated into and made a part of this
 12 Act. Any person who violates such paragraph
 13 shall be subject to the penalties and entitled to
 14 the privileges and immunities provided in the
 15 Federal Trade Commission Act.

16 (3) ENFORCEMENT BY STATE ATTORNEYS GEN-
 17 ERAL.—

18 (A) IN GENERAL.—If the attorney general
 19 of a State has reason to believe a violation of
 20 paragraph (1) has occurred or is occurring, the
 21 attorney general, in addition to any authority
 22 the attorney general may have to bring an ac-
 23 tion in State court under the law of the State,
 24 may bring a civil action in any court of com-
 25 petent jurisdiction to—

1 (i) enjoin further such violation by the
2 defendant;

3 (ii) enforce compliance with such
4 paragraph;

5 (iii) obtain civil penalties in the same
6 amount as may be obtained by the Com-
7 mission in a civil action under section 5(m)
8 of the Federal Trade Commission Act (15
9 U.S.C. 45(m)); or

10 (iv) obtain damages, restitution, or
11 other compensation on behalf of residents
12 of the State.

13 (B) NOTICE.—Before filing an action
14 under subparagraph (A), the attorney general
15 of a State shall provide to the Commission a
16 written notice of such action and a copy of the
17 complaint for such action. If the attorney gen-
18 eral determines that it is not feasible to provide
19 the notice described in this subparagraph before
20 the filing of the action, the attorney general
21 shall provide written notice of the action and a
22 copy of the complaint to the Commission imme-
23 diately upon the filing of the action.

24 (C) AUTHORITY OF FEDERAL TRADE COM-
25 MISSION.—

(i) IN GENERAL.—On receiving notice under subparagraph (B) of an action under subparagraph (A), the Commission shall have the right—

(I) to intervene in the action;

(II) upon so intervening, to be heard on all matters arising therein; and

(III) to file petitions for appeal.

(ii) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted a civil action for violation of paragraph (1) (referred to in this clause as the “Federal action”), no attorney general of a State may bring an action under subparagraph (A) during the pendency of the Federal action against any defendant named in the complaint in the Federal action for any violation of such paragraph alleged in such complaint.

(D) RELATIONSHIP WITH STATE-LAW CLAIMS.—

(i) PRESERVATION OF STATE-LAW CLAIMS.—Nothing in this section shall pre-

vent the attorney general of a State from bringing an action under State law for acts or practices that also violate paragraph (1).

(ii) ASSERTION IN SAME CIVIL ACTION.—If the attorney general of a State has authority to bring an action under State law for acts or practices that also violate paragraph (1), the attorney general may assert the State-law claim and the claim for violation of such paragraph in the same civil action.

(E) ACTIONS BY OTHER STATE OFFICIALS.—In addition to civil actions brought by attorneys general under subparagraph (A), any other consumer protection officer of a State who is authorized by the State to do so may bring a civil action under such subparagraph, subject to the same requirements and limitations that apply under this paragraph to civil actions brought by attorneys general.

(4) RULEMAKING AUTHORITY.—The Commission may promulgate regulations under section 553 of title 5, United States Code, to implement paragraph (1).

1 (b) REPORT TO CONGRESS ON TOBACCO PRODUCT
2 ADVERTISING.—

3 (1) IN GENERAL.—Not later than 2 years after
4 the date of the enactment of this Act, and annually
5 thereafter, the Commission shall submit to Congress
6 a report relating to each category of products de-
7 scribed in paragraph (2) (or a single report a por-
8 tion of which relates to each such category) that
9 contains the following:

10 (A) Information on domestic sales and ad-
11 vertising and promotional activity by the manu-
12 facturers that have the largest market shares of
13 the product category.

14 (B) Such recommendations for legislation
15 as the Commission may consider appropriate.

16 (2) PRODUCT CATEGORIES DESCRIBED.—The
17 categories of products described in this paragraph
18 are the following:

19 (A) Cigarettes.

20 (B) Cigars.

21 (C) Smokeless tobacco.

22 (D) Electronic nicotine delivery systems.

23 (c) PRESERVATION OF AUTHORITY.—Nothing in this
24 section may be construed in any way to limit the Commis-
25 sion's authority under any other provision of law.

1 (d) DEFINITIONS.—In this section:

2 (1) CIGAR.—The term “cigar” means a tobacco
3 product that—

4 (A) is not a cigarette; and

5 (B) is a roll of tobacco wrapped in leaf to-
6 bacco or any substance containing tobacco.

7 (2) CIGARETTE.—The term “cigarette” has the
8 meaning given such term in section 900 of the Fed-
9 eral Food, Drug, and Cosmetic Act (21 U.S.C. 387).

10 (3) COMMISSION.—The term “Commission”
11 means the Federal Trade Commission.

12 (4) ELECTRONIC NICOTINE DELIVERY SYS-
13 TEM.—The term “electronic nicotine delivery sys-
14 tem” has the meaning given such term in section
15 900 of the Federal Food, Drug, and Cosmetic Act
16 (21 U.S.C. 387), as amended by section 103(c)(3).

17 (5) ENDORSE.—The term “endorse” means to
18 communicate an advertising message (including a
19 verbal statement, demonstration, or depiction of the
20 name, signature, likeness, or other identifying per-
21 sonal characteristics of an individual or the name or
22 seal of an organization) that consumers are likely to
23 believe reflects the opinions, beliefs, findings, or ex-
24 periences of a party other than the sponsoring ad-

1 vertiser, even if the views expressed by such party
2 are identical to those of the sponsoring advertiser.

3 (6) NICOTINE.—The term “nicotine” has the
4 meaning given such term in section 900 of the Fed-
5 eral Food, Drug, and Cosmetic Act (21 U.S.C. 387).

6 (7) SMOKELESS TOBACCO.—The term “smoke-
7 less tobacco” has the meaning given such term in
8 section 900 of the Federal Food, Drug, and Cos-
9 metic Act (21 U.S.C. 387).

10 (8) TOBACCO PRODUCT.—The term “tobacco
11 product” has the meaning given such term in section
12 201 of the Federal Food, Drug, and Cosmetic Act
13 (21 U.S.C. 321).

14 **TITLE III—PUBLIC HEALTH** 15 **PROGRAMS**

16 **SEC. 301. OUTREACH TO MEDICALLY UNDERSERVED COM-** 17 **MUNITIES.**

18 The Secretary shall ensure that programs at the Cen-
19 ters for Disease Control and Prevention related to out-
20 reach to medically underserved communities, including ra-
21 cial and ethnic minority populations, include efforts to
22 educate and provide guidance regarding effective evidence
23 based strategies—

24 (1) to prevent tobacco and nicotine addiction;
25 and

1 (2) for smoking cessation and the cessation of
2 the use of electronic nicotine delivery systems, in-
3 cluding e-cigarettes.

4 **SEC. 302. DEMONSTRATION GRANT PROGRAM TO DEVELOP**
5 **STRATEGIES FOR SMOKING CESSATION IN**
6 **MEDICALLY UNDERSERVED COMMUNITIES.**

7 (a) IN GENERAL.—The Secretary of Health and
8 Human Services, acting through the Director of the Cen-
9 ters for Disease Control and Prevention, shall establish
10 a demonstration program to award grants to or contract
11 with State, local, Tribal, or territorial public health de-
12 partments to support—

13 (1) the development of improved evidence-based
14 strategies for smoking cessation and the cessation of
15 the use of electronic nicotine delivery systems, in-
16 cluding e-cigarettes, for populations in medically un-
17 derserved communities, particularly racial and ethnic
18 minority populations;

19 (2) the development of improved communication
20 and outreach tools to reach populations in medically
21 underserved communities, particularly racial and
22 ethnic minority populations, addicted to tobacco and
23 e-cigarette products; and

24 (3) improved coordination, access, and referrals
25 to services for smoking cessation and the cessation

1 of the use of electronic nicotine delivery systems, in-
 2 cluding e-cigarettes, including smoking cessation
 3 products and mental health and counseling services.

4 (b) APPLICATION.—To be eligible to receive a grant
 5 under subsection (a), a State, local, Tribal, or territorial
 6 public health department shall submit to the Secretary an
 7 application at such time, in such manner, and containing
 8 such information as the Secretary may require.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 10 are authorized to be appropriated to carry out this section,
 11 \$3,000,000 for each of fiscal years 2020 through 2024.

12 **TITLE IV—NICOTINE OR VAPING** 13 **ACCESS PROTECTION AND** 14 **ENFORCEMENT**

15 **SEC. 401. INCREASING CIVIL PENALTIES APPLICABLE TO** 16 **CERTAIN VIOLATIONS OF RESTRICTIONS ON** 17 **SALE AND DISTRIBUTION OF TOBACCO PROD-** 18 **UCTS.**

19 (a) PENALTIES.—Subparagraph (A) of section
 20 103(q)(2) of the Family Smoking Prevention and Tobacco
 21 Control Act (21 U.S.C. 333 note) is amended to read as
 22 follows:

23 “(A) IN GENERAL.—The amount of the
 24 civil penalty to be applied for violations of sec-
 25 tion 906(d)(5) or restrictions promulgated

1 under section 906(d), as described in paragraph
2 (1), shall be as follows:

3 “(i) With respect to a retailer with an
4 approved training program, the amount of
5 the civil penalty shall not exceed—

6 “(I) in the case of the first viola-
7 tion, \$0, together with the issuance of
8 a warning letter to the retailer;

9 “(II) in the case of a second vio-
10 lation within a 12-month period,
11 \$500;

12 “(III) in the case of a third viola-
13 tion within a 24-month period,
14 \$1,000;

15 “(IV) in the case of a fourth vio-
16 lation within a 24-month period,
17 \$4,000;

18 “(V) in the case of a fifth viola-
19 tion within a 36-month period,
20 \$10,000; and

21 “(VI) in the case of a sixth or
22 subsequent violation within a 48-
23 month period, \$20,000 as determined
24 by the Secretary on a case-by-case
25 basis.

“(ii) With respect to a retailer that does not have an approved training program, the amount of the civil penalty shall not exceed—

“(I) in the case of the first violation, \$500;

“(II) in the case of a second violation within a 12-month period, \$1,000;

“(III) in the case of a third violation within a 24-month period, \$2,000;

“(IV) in the case of a fourth violation within a 24-month period, \$4,000;

“(V) in the case of a fifth violation within a 36-month period, \$10,000; and

“(VI) in the case of a sixth or subsequent violation within a 48-month period, \$20,000 as determined by the Secretary on a case-by-case basis.”.

(b) APPLICABILITY.—The amendment made by subsection (a) applies with respect to a violation of a restric-

tion promulgated under section 906(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387f(d)(1)), as described in section 103(q)(1) of the Family Smoking Prevention and Tobacco Control Act (21 U.S.C. 333 note), or to a violation of section 906(d)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387f(d)(5)) occurring on or after the date that is 6 months after the date of enactment of this Act. The penalties specified in such section 103(q)(2)(A), as in effect on the day before such date, shall continue to apply to violations occurring before such date.

SEC. 402. STUDY AND REPORT ON E-CIGARETTES.

Not later than 5 years after the date of enactment of this Act, the Comptroller General of the United States shall—

(1) complete a study on—

(A) the relationship of e-cigarettes to tobacco cessation;

(B) the perception of the harmful effects of e-cigarettes; and

(C) the effects of secondhand exposure to smoke from e-cigarettes; and

- 1 (2) submit to Congress a report on the results
- 2 of such study, including recommendations based on
- 3 such results.

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