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113TH CONGRESS
2D SESSION

S. 2047

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2014

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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting Children from Electronic Cigarette Advertising Act of 2014''.

SEC. 2. FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—Congress makes the following findings:

(1) According to the Food and Drug Administration, because electronic cigarettes have not been fully studied, consumers currently do not know—

(A) the potential risks of electronic cigarettes when used as intended;

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

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

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

(3) According to the Surgeon General, adolescents are particularly vulnerable to the adverse effects of nicotine and adolescent exposure to nicotine may have lasting adverse consequences for brain development.

(4) Use of electronic cigarettes has risen in youth according to a study by the Centers for Disease Control and Prevention that was released in September 2013, which found that in one year, from 2011 to 2012, the percentage of middle and high

school students who had ever used electronic cigarettes more than doubled.

(5) Electronic cigarette use may lead children to become addicted to nicotine and could be a gateway to various tobacco products.

(6) Marketing of electronic cigarettes to youth is occurring in the form of advertising using cartoons and sponsorships of events popular with youth such as concerts and sporting events.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Federal Trade Commission should prohibit the advertising, promoting, and marketing in commerce of electronic cigarettes to children as an unfair or deceptive act or practice, in order to protect the health of the youth of the United States.

SEC. 3. PROHIBITION ON MARKETING OF ELECTRONIC CIGARETTES TO CHILDREN.

(a) DEFINITIONS.—In this section:

(1) CHILD.—The term ''child'' means an individual who is under the age of 18 years.

(2) COMMERCE.—The term ''commerce'' has the meaning given such term in section 4 of the Federal Trade Commission Act (15 U.S.C. 44).

(3) ELECTRONIC CIGARETTE.—The term ''electronic cigarette'' means a battery-operated product

designed to deliver nicotine, flavor, or other chemicals and that turns chemicals, such as nicotine, into an aerosol that is inhaled by the user.

(b) PROHIBITION.—No person may advertise, promote, or market in commerce an electronic cigarette in a manner that the person knows or should know will have the effect of increasing the use of an electronic cigarette by a child.

(c) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

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

(2) POWERS OF COMMISSION.—

(A) IN GENERAL.—The Federal Trade Commission shall enforce this section in the same manner, by the same means, and with the 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 may 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) 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—

(A) to enjoin further violation of such subsection by such person;

(B) to compel compliance with such subsection;

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

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

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

(2) CIVIL PENALTIES.—

(A) CALCULATION.—For purposes of imposing a civil penalty under paragraph (1)(E) with respect to a person who violates subsection (b), the amount determined under this paragraph is the amount calculated by multiplying the number of days that the person is not in compliance with subsection (b) by an amount not greater than $16,000.

(B) ADJUSTMENT FOR INFLATION.—Beginning on the date on which the Bureau of Labor Statistics first publishes the Consumer Price Index after the date that is 1 year after the date of the enactment of this Act, and annually thereafter, the amounts specified in subparagraph (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 the Federal Trade Commission immediately upon instituting the civil action.

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

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

(ii) upon intervening—

(I) be heard on all matters arising in the civil action; and

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

(4) INVESTIGATORY POWERS.—Nothing in this subsection may be construed to prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.

(5) PREEMPTIVE ACTION BY FEDERAL TRADE COMMISSION.—If the Federal Trade Commission institutes a civil action or an administrative action with respect to a violation of subsection (b), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with re-

spect to which the Commission instituted such action.

(6) VENUE; SERVICE OF PROCESS.—

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

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

(ii) another court of competent jurisdiction.

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

(i) is an inhabitant; or

(ii) may be found.

(7) ACTIONS BY OTHER STATE OFFICIALS.—

(A) IN GENERAL.—In addition to civil actions brought by attorneys general under paragraph (1), any other officer of a State who is authorized by the State to do so may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(B) SAVINGS PROVISION.—Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

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

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

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