

114TH CONGRESS
1ST SESSION

H. R. 478

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 2015

Ms. ESTY (for herself, Ms. DEGETTE, Mrs. BUSTOS, Mr. RUIZ, Ms. DELAURO, Mr. CÁRDENAS, Mr. CARNEY, Ms. CLARK of Massachusetts, Mr. DELANEY, Mr. DEUTCH, Mr. ELLISON, Ms. FRANKEL of Florida, Mr. HASTINGS, Mr. HONDA, Mr. JOHNSON of Georgia, Mr. LARSON of Connecticut, Ms. LEE, Mr. LEVIN, Mr. LOWENTHAL, Ms. MATSUI, Mr. MCGOVERN, Ms. MENG, Mr. PETERS, Mr. RANGEL, Ms. ROYBAL-ALLARD, Mr. RUSH, Ms. SCHAKOWSKY, Ms. SLAUGHTER, Mr. SWALWELL of California, Mr. TAKANO, Ms. WASSERMAN SCHULTZ, Mr. THOMPSON of California, and Mr. COURTNEY) introduced the following bill; which was referred to the Committee on Energy and Commerce

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”.

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

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

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

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

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

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

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

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

23 (4) Use of electronic cigarettes has risen in
24 youth according to a study by the Centers for Dis-
25 ease Control and Prevention that was released in
26 November 2014, which found that in two years,

1 from 2011 to 2013, the percentage of middle and
2 high school students who had ever used electronic
3 cigarettes tripled.

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

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

11 (7) According to a study published in June
12 2014 in the journal *Pediatrics*, youth exposure to
13 television advertisements for electronic cigarettes in-
14 creased by 256 percent from 2011 to 2013, exposing
15 24 million children to such advertisements.

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 subparagraph (A).

17 (b) PROHIBITION.—

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

22 (A) the person knows or should know is
23 likely to contribute towards initiating or in-
24 creasing the use of electronic cigarettes by chil-
25 dren who are younger than 18 years of age; or

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

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

11 (c) ENFORCEMENT BY FEDERAL TRADE COMMIS-
12 SION.—

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

19 (2) POWERS OF COMMISSION.—

20 (A) IN GENERAL.—The Federal Trade
21 Commission shall enforce this section in the
22 same manner, by the same means, and with the
23 same jurisdiction, powers, and duties as though
24 all applicable terms and provisions of the Fed-
25 eral Trade Commission Act (15 U.S.C. 41 et

1 seq.) were incorporated into and made a part of
2 this section.

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

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

12 (d) ENFORCEMENT BY STATES.—

13 (1) IN GENERAL.—In any case in which the at-
14 torney general of a State has reason to believe that
15 an interest of the residents of the State has been or
16 is threatened or adversely affected by the engage-
17 ment of any person subject to subsection (b) in a
18 practice that violates such subsection, the attorney
19 general of the State may, as *parens patriae*, bring
20 a civil action on behalf of the residents of the State
21 in an appropriate district court of the United
22 States—

23 (A) to enjoin further violation of such sub-
24 section by such person;

1 (B) to compel compliance with such sub-
2 section;

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

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

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

9 (2) CIVIL PENALTIES.—

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

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

1 published on that date from the Consumer
2 Price Index published the previous year.

3 (3) RIGHTS OF FEDERAL TRADE COMMIS-
4 SION.—

5 (A) NOTICE TO FEDERAL TRADE COMMIS-
6 SION.—

7 (i) IN GENERAL.—Except as provided
8 in clause (iii), the attorney general of a
9 State shall notify the Federal Trade Com-
10 mission in writing that the attorney gen-
11 eral intends to bring a civil action under
12 paragraph (1) not later than 10 days be-
13 fore initiating the civil action.

14 (ii) CONTENTS.—The notification re-
15 quired by clause (i) with respect to a civil
16 action shall include a copy of the complaint
17 to be filed to initiate the civil action.

18 (iii) EXCEPTION.—If it is not feasible
19 for the attorney general of a State to pro-
20 vide the notification required by clause (i)
21 before initiating a civil action under para-
22 graph (1), the attorney general shall notify
23 the Federal Trade Commission imme-
24 diately upon instituting the civil action.

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

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

7 (ii) upon intervening—

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

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

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

20 (5) PREEMPTIVE ACTION BY FEDERAL TRADE
21 COMMISSION.—If the Federal Trade Commission institutes
22 a civil action or an administrative action with respect
23 to a violation of subsection (b), the attorney general
24 of a State may not, during the pendency of such action,
25 bring a civil action under para-

1 graph (1) against any defendant named in the com-
2 plaint of the Commission for the violation with re-
3 spect to which the Commission instituted such ac-
4 tion.

5 (6) VENUE; SERVICE OF PROCESS.—

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

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

12 (ii) another court of competent juris-
13 diction.

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

17 (i) is an inhabitant; or

18 (ii) may be found.

19 (7) ACTIONS BY OTHER STATE OFFICIALS.—

20 (A) IN GENERAL.—In addition to civil ac-
21 tions brought by attorneys general under para-
22 graph (1), any other officer of a State who is
23 authorized by the State to do so may bring a
24 civil action under paragraph (1), subject to the
25 same requirements and limitations that apply

1 under this subsection to civil actions brought by
2 attorneys general.

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

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

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

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