

115TH CONGRESS  
2D SESSION

# H. R. 7337

To amend the Act of October 19, 1949 (15 U.S.C. 375 et seq.; commonly referred to as the “Jenkins Act”), to prevent the interstate sale and delivery of electronic cigarettes, cigars, and pipe tobacco to minors in violation of law.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2018

Ms. DELAURO (for herself, Ms. WASSERMAN SCHULTZ, Mr. RASKIN, Mr. RUSH, and Mr. VISCLOSKY) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Act of October 19, 1949 (15 U.S.C. 375 et seq.; commonly referred to as the “Jenkins Act”), to prevent the interstate sale and delivery of electronic cigarettes, cigars, and pipe tobacco to minors in violation of law.

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 “Stop Tobacco Sales  
5       to Youth Act of 2018”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

1           (1) Tobacco products cause numerous serious  
2       diseases, including cancer, heart disease, and res-  
3       piratory disease, and they contain nicotine, a highly  
4       addictive substance.

5           (2) According to the Surgeon General of the  
6       United States, adolescents are particularly vulner-  
7       able to the adverse effects of nicotine, and adoles-  
8       cent exposure to nicotine may have lasting adverse  
9       consequences for brain development.

10          (3) Youth use of electronic cigarettes and hook-  
11       ah (water pipe) has risen according to the National  
12       Youth Tobacco Survey released by the Centers for  
13       Disease Control and Prevention, and the Food and  
14       Drug Administration, in April 2015.

15          (4) Current use of electronic cigarettes among  
16       high school students tripled from 4.5 percent in  
17       2013 to 13.4 percent in 2014 (compared to 1.5 per-  
18       cent in 2011); approximately 2,000,000 high school  
19       students currently use these products.

20          (5) Current use of electronic cigarettes among  
21       middle school students tripled from 1.1 percent in  
22       2013 to 3.9 percent in 2014; approximately 450,000  
23       middle school students currently use these products.

1           (6) Current use of hookah among high school  
2 students increased from 4.1 percent in 2011 to 9.4  
3 percent in 2014.

4           (7) Current use of cigars among high school  
5 students was 8.2 percent in 2014 (1,200,000 stu-  
6 dents). Current use of cigars among high school  
7 boys was 10.8 percent, about the same rate at which  
8 they smoke cigarettes (10.6 percent).

9           (8) The sale of electronic cigarettes, cigars,  
10 hookah, and other tobacco products over the Inter-  
11 net, and through mail, fax, or phone orders, makes  
12 it cheaper and easier for children to obtain these  
13 products.

14           (9) Electronic cigarettes are being marketed in  
15 ways that appeal to youth, in the form of advertising  
16 using images that appeal to youth, advertisements  
17 on television and the Internet, and sponsorships of  
18 events popular with youth, such as concerts and  
19 sporting events.

20           (10) According to a study published in March  
21 2015 in the Journal of the American Medical Asso-  
22 ciation Pediatrics, 93.7 percent of youth partici-  
23 pating in a study of Internet electronic cigarette  
24 sales successfully purchased electronic cigarettes be-

1       cause the Web sites lacked adequate age-verification  
2       methods.

3   **SEC. 3. AMENDMENTS.**

4       Section 1 of the Act of October 19, 1949 (15 U.S.C.  
5   375); commonly referred to as the “Jenkins Act”), is  
6   amended—

7           (1) in paragraph (2)—

8               (A) in subparagraph (A)—

9                   (i) in clause (i) by striking “and” at  
10                  the end;

11                  (ii) in clause (ii) by striking the pe-  
12                  riod at the end and inserting “; and”; and

13                  (iii) by adding at the end the fol-  
14                  lowing:

15                   “(iii) includes electronic cigarettes.”;

16                  and

17               (B) in subparagraph (B)—

18                   (i) in the heading by striking “EX-  
19                  CEPTION” and inserting “INCLUSIONS”;

20                   (ii) by striking “does not include” and  
21                  inserting “includes”; and

22                   (iii) by inserting “and pipe tobacco  
23                  (as defined in section 5702 of the Internal  
24                  Revenue Code of 1986)” before the period  
25                  at the end; and

1           (2) by inserting after paragraph (6) the fol-  
 2       lowing:

3           “(6A) ELECTRONIC CIGARETTE.—The term  
 4       ‘electronic cigarette’ means any electronic device  
 5       that delivers nicotine, flavor, or other substance via  
 6       an aerosolized solution (including an electronic ciga-  
 7       rette, cigar, pipe, or hookah) to the user inhaling  
 8       from the device (including any component, liquid,  
 9       part, or accessory of such a device whether or not  
 10      sold separately) but excludes product that—

11           “(A) is approved by the Food and Drug  
 12      Administration for sale as a tobacco cessation  
 13      product or for another therapeutic purpose; and

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

17 **SEC. 4. EXCLUSIONS REGARDING INDIAN TRIBES AND**  
 18 **TRIBAL MATTERS.**

19       (a) IN GENERAL.—Nothing in this Act or the amend-  
 20      ments made by this Act shall be construed to amend, mod-  
 21      ify, or otherwise affect—

22           (1) any agreements, compacts, or other inter-  
 23      governmental arrangements between any State or  
 24      local government and any government of an Indian  
 25      tribe (as that term is defined in section 4(e) of the

1 Indian Self-Determination and Education Assistance  
2 Act (25 U.S.C. 450b(e))) relating to the collection of  
3 taxes on cigarettes or smokeless tobacco sold in In-  
4 dian country;

5 (2) any State laws that authorize or otherwise  
6 pertain to any such intergovernmental arrangements  
7 or create special rules or procedures for the collec-  
8 tion of State, local, or tribal taxes on cigarettes or  
9 smokeless tobacco sold in Indian country;

10 (3) any limitations under Federal or State law,  
11 including Federal common law and treaties, on  
12 State, local, and tribal tax and regulatory authority  
13 with respect to the sale, use, or distribution of ciga-  
14 rettes and smokeless tobacco by or to Indian tribes,  
15 tribal members, tribal enterprises, or in Indian coun-  
16 try;

17 (4) any Federal law, including Federal common  
18 law and treaties, regarding State jurisdiction, or  
19 lack thereof, over any tribe, tribal members, tribal  
20 enterprises, tribal reservations, or other lands held  
21 by the United States in trust for one or more Indian  
22 tribes; or

23 (5) any State or local government authority to  
24 bring enforcement actions against persons located in  
25 Indian country.

1 (b) COORDINATION OF LAW ENFORCEMENT.—Noth-  
2 ing in this Act or the amendments made by this Act shall  
3 be construed to inhibit or otherwise affect any coordinated  
4 law enforcement effort by one or more States or other ju-  
5 risdictions, including Indian tribes, through interstate  
6 compact or otherwise, that—

7 (1) provides for the administration of tobacco  
8 product laws or laws pertaining to interstate sales or  
9 other sales of tobacco products;

10 (2) provides for the seizure of tobacco products  
11 or other property related to a violation of such laws;  
12 or

13 (3) establishes cooperative programs for the ad-  
14 ministration of such laws.

15 (c) TREATMENT OF STATE AND LOCAL GOVERN-  
16 MENTS.—Nothing in this Act or the amendments made  
17 by this Act shall be construed to authorize, deputize, or  
18 commission States or local governments as instrumental-  
19 ities of the United States.

20 (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—  
21 Nothing in this Act or the amendments made by this Act  
22 shall prohibit, limit, or restrict enforcement by the Attor-  
23 ney General of the United States of this Act or an amend-  
24 ment made by this Act within Indian country.

1 (e) AMBIGUITY.—Any ambiguity between the lan-  
2 guage of this section or its application and any other pro-  
3 vision of this Act shall be resolved in favor of this section.

4 (f) DEFINITIONS.—In this section—

5 (1) the term “Indian country” has the meaning  
6 given that term in section 1 of the Act of October  
7 19, 1949 (15 U.S.C. 375; commonly referred to as  
8 the “Jenkins Act”), as amended by this Act; and

9 (2) the term “tribal enterprise” means any  
10 business enterprise, regardless of whether incor-  
11 porated or unincorporated under Federal or tribal  
12 law, of an Indian tribe or group of Indian tribes.

13 **SEC. 5. SEVERABILITY.**

14 If any provision of this Act, or any amendment made  
15 by this Act, or the application thereof to any person or  
16 circumstance, is held invalid, the remainder of the Act and  
17 the application of the Act to any other person or cir-  
18 cumstance shall not be affected thereby.

19 **SEC. 6. EFFECTIVE DATE.**

20 This Act, and the amendments made by this Act,  
21 shall take effect 90 days after the date of the enactment  
22 of this Act.

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