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

IN THE SENATE OF THE UNITED STATES
AUGUST 1, 2018
Mr. DURBIN (for himself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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

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

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

SEC. 2. ADDITIONAL RESTRICTIONS ON USE OF TOBACCO FLAVORS.

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

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by inserting after subparagraph (A) the following:

“(B) SPECIAL RULE FOR TOBACCO PRODUCTS OTHER THAN CIGARETTES.—

“(i) IN GENERAL.—Except as provided in clause (ii), a tobacco product that is not a cigarette, or any component, part, or accessory of such a product, shall not contain, as a constituent (including a smoke or aerosol constituent) or additive, an artificial or natural flavor (other than tobacco) or an herb or spice (including menthol, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, and coffee) that is a characterizing flavor of the tobacco product, tobacco smoke, or aerosol emitted from the product. Nothing in this subparagraph shall be construed to limit
the Secretary’s authority to take action under this section or other provisions of this Act applicable to any artificial or natural flavor, herb, or spice not specified in this subparagraph.

“(ii) EXCEPTIONS.—An electronic nicotine delivery system component or part shall not contain or use an artificial or natural flavor (other than tobacco) that is a characterizing flavor of the product or its aerosol unless the Secretary issues an order finding that a manufacturer has demonstrated that use of the characterizing flavor—

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

“(II) will not increase the likelihood of youth initiation of nicotine or tobacco products; and

“(III) will not increase the likelihood of harm to the person using the characterizing flavor.”.

(b) DEFINITIONS.—Section 900 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387) is amended—
(1) by redesignating paragraphs (8) through (22) as paragraphs (9) through (23); and

(2) by inserting after paragraph (7) the following:

“(8) **Electronic nicotine delivery system.**—The term ‘electronic nicotine delivery system’—

“(A) means any electronic device that delivers nicotine, flavor, or another substance via an aerosolized solution to the user inhaling from the device (including e-cigarettes, e-hookah, e-cigars, vape pens, advanced refillable personal vaporizers, and electronic pipes) and any component, liquid, part, or accessory of such a device, whether or not sold separately; and

“(B) does not include a product that—

“(i) is approved by the Food and 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 (i).”.

(e) **Conforming Amendment.**—Section 9(1) of the Comprehensive Smokeless Tobacco Health Education Act
of 1986 (15 U.S.C. 4408(1)) is amended by striking “section 900(18)” and inserting “section 900(19)”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of enactment of this Act.