

115TH CONGRESS  
2D SESSION

# S. 3701

To protect and educate children about the dangers of e-cigarettes and other electronic nicotine delivery systems, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 4, 2018

Mr. HATCH (for himself and Mr. UDALL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To protect and educate children about the dangers of e-cigarettes and other electronic nicotine delivery systems, 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 “Smoke-Free Schools  
5 Act of 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The use of tobacco among young students  
9 remains a serious health concern, with more than 1

1 in every 4 high school students, and approximately  
2 1 in every 14 middle school students, reporting re-  
3 cently using a tobacco product.

4 (2) Roughly 95 percent of smokers will start  
5 smoking before they are 21 years of age, with more  
6 than 90 percent of adult smokers reporting having  
7 started when they were teens.

8 (3) Since 2014, e-cigarettes and other electronic  
9 nicotine delivery systems (commonly referred to as  
10 “ENDS”) have become the most commonly used  
11 and popular tobacco products among middle school  
12 and high school students.

13 (4) The use of electronic nicotine delivery sys-  
14 tems, including e-cigarettes, continues to rise, with  
15 the Centers for Disease Control and Prevention and  
16 the Food and Drug Administration having recorded  
17 a 50-percent and more than 75-percent increase in  
18 e-cigarette use among middle school and high school  
19 students, respectively, from 2017 to 2018.

20 (5) The most recent data finds that 3,620,000  
21 middle school and high school students were current  
22 e-cigarette users in 2018, an increase of 1,500,000  
23 students in just one year.

24 (6) Despite a 2018 National Academies of  
25 Sciences, Engineering, and Medicine report that

1 found e-cigarette aerosol contained fewer toxicants  
2 than combusted cigarette smoke, e-cigarettes present  
3 unique health concerns for middle school and high  
4 school students.

5 (7) Electronic nicotine delivery systems, includ-  
6 ing e-cigarettes, contain nicotine, a drug the Sur-  
7 geon General has determined is highly addictive and  
8 can be harmful to the development of the adolescent  
9 brain.

10 (8) Congress has a major policy-setting role in  
11 ensuring that the use of tobacco products among mi-  
12 nors is discouraged to the maximum extent possible.

13 (9) Additionally, local educational agencies  
14 should be given greater flexibility to target specific  
15 funding to efforts aimed at eradicating the problem  
16 of the use of electronic nicotine delivery systems, in-  
17 cluding e-cigarettes, as such use affects student  
18 health, productivity, safety, and outcomes and im-  
19 pedes a distraction-free learning environment.

20 **SEC. 3. PROHIBITION OF ELECTRONICALLY DELIVERED**  
21 **NICOTINE SYSTEMS IN SCHOOLS.**

22 (a) PROHIBITION.—The Pro-Children Act of 2001  
23 (20 U.S.C. 7971 et seq.) is amended—

24 (1) in section 8572 (20 U.S.C. 7972), by add-  
25 ing at the end the following:

1           “(6) TOBACCO PRODUCT.—The term ‘tobacco  
2           product’ means a tobacco product within the mean-  
3           ing of the term under the Federal Food, Drug, and  
4           Cosmetic Act (21 U.S.C. 301 et seq.).”;

5           (2) in section 8573 (20 U.S.C. 7973)—

6           (A) in subsection (a), by inserting “or the  
7           use of any tobacco product” after “smoking”;

8           (B) in subsection (b)(1), by inserting “or  
9           the use of any tobacco product” after “smok-  
10          ing”;

11          (C) in subsection (c)—

12          (i) in paragraph (1), by inserting “or  
13          the use of any tobacco product” after  
14          “smoking”; and

15          (ii) in paragraph (2)(A), by inserting  
16          “or the use of any tobacco product” after  
17          “smoking”; and

18          (D) in subsection (d)—

19          (i) by striking “NOTICE.—The” and  
20          inserting the following: “NOTICE.—

21          “(1) IN GENERAL.—Except as provided in para-  
22          graph (2), the”; and

23          (ii) by adding at the end the fol-  
24          lowing:

1           “(2) RULE FOR TOBACCO PRODUCTS.—Any  
2 prohibition under subsections (a) through (c) regard-  
3 ing a tobacco product that was not already prohib-  
4 ited, as such section was in effect on the day before  
5 the date of enactment of the Smoke-Free Schools  
6 Act of 2018, shall be effective 30 days after the date  
7 of enactment of such Act.”.

8           (b) CONFORMING AMENDMENTS.—The Pro-Children  
9 Act of 2001 (20 U.S.C. 7971 et seq.) is amended—

10           (1) in section 8571 (20 U.S.C. 7971), by strik-  
11 ing “part” and inserting “subpart”;

12           (2) in section 8572 (20 U.S.C. 7972)—

13                 (A) in the matter preceding paragraph (1),  
14 by striking “part” and inserting “subpart”; and

15                 (B) in paragraph (2)(B), by striking  
16 “part” and inserting “subpart”; and

17           (3) in section 8574 (20 U.S.C. 7974), by strik-  
18 ing “part” each place the term appears and insert-  
19 ing “subpart”.

20           (c) REPEAL.—The Pro-Children Act of 1994 (20  
21 U.S.C. 6081 et seq.) is repealed.

1 **SEC. 4. CLARIFYING TITLE IV OF ESEA TO ALLOW SCHOOLS**  
2 **TO USE FUNDING TO ADDRESS E-CIGARETTE**  
3 **USE AMONG STUDENTS.**

4 (a) SAFE AND HEALTHY STUDENT FUNDING.—Sub-  
5 part 1 of part A of title IV of the Elementary and Sec-  
6 ondary Education Act of 1965 (20 U.S.C. 7111 et seq.)  
7 is amended—

8 (1) in section 4102 (20 U.S.C. 7112), by add-  
9 ing at the end the following:

10 “(9) TOBACCO PRODUCT.—The term ‘tobacco  
11 product’ means a tobacco product within the mean-  
12 ing of the term under the Federal Food, Drug, and  
13 Cosmetic Act (21 U.S.C. 301 et seq.).”;

14 (2) in section 4104(b)(3)(B) (20 U.S.C.  
15 7114(b)(3)(B))—

16 (A) in clause (iii), by striking “and” after  
17 the semicolon; and

18 (B) by adding at the end the following:

19 “(v) supporting local educational  
20 agencies in the reduction or elimination of  
21 the use of electronic nicotine delivery sys-  
22 tems (including e-cigarettes) or other to-  
23 bacco products among children in schools;  
24 and”;

25 (3) in section 4108(5)(A) (20 U.S.C.  
26 7118(5)(A))—

1 (A) in clause (i), by striking “and” after  
2 the semicolon;

3 (B) in clause (ii), by inserting “and” after  
4 the semicolon; and

5 (C) by adding at the end the following:

6 “(iii) targeted efforts to reduce or  
7 eliminate the use of electronic nicotine de-  
8 livery systems (including e-cigarettes) or  
9 other tobacco products among children in  
10 schools;”.

11 (b) 21ST CENTURY COMMUNITY CENTER FUND-  
12 ING.—Section 4205(a)(12) of the Elementary and Sec-  
13 ondary Education Act of 1965 (20 U.S.C. 7175) is amend-  
14 ed by inserting “, targeted efforts to reduce or eliminate  
15 the use of electronic nicotine delivery systems (including  
16 e-cigarettes) or other tobacco products (as defined in sec-  
17 tion 4102) among children in schools,” before “and coun-  
18 seling”.

19 **SEC. 5. STUDIES AND REPORTS ON THE USE OF ELEC-**  
20 **TRONIC NICOTINE DELIVERY SYSTEMS.**

21 (a) FDA STUDIES.—

22 (1) STUDY.—Not later than 60 days after the  
23 date of enactment of this Act, the Secretary shall,  
24 in coordination with the Secretary of Education and  
25 the Director of the Centers for Disease Control and

1 Prevention, conduct a study, or several studies, in-  
2 cluding all of the following topics:

3 (A) Best practices for schools and local  
4 educational agencies to take in addressing elec-  
5 tronic nicotine delivery systems in schools,  
6 which may include—

7 (i) banning electronic nicotine delivery  
8 systems on school grounds; or

9 (ii) steps that can be taken by schools  
10 to educate students regarding the dangers  
11 of electronic nicotine delivery systems.

12 (B) Gaps in knowledge of the harms of  
13 electronic nicotine delivery system use among  
14 adolescents and young adults, including injuries  
15 and poisoning relating to electronic nicotine de-  
16 livery systems.

17 (C) The dose-response association between  
18 electronic nicotine delivery system use and com-  
19 bustible tobacco smoking in adolescents and  
20 young adults, including an assessment of the  
21 frequency and intensity of use and dependence  
22 systems for both types of products.

23 (D) To the extent practicable, current ef-  
24 forts, as of the date of the study, by local edu-  
25 cational agencies to target Federal funding to



1           combat electronic nicotine delivery system use  
2           in schools.

3           (2) CONSULTATION.—In the process of con-  
4           ducting any study under paragraph (1), the Sec-  
5           retary shall solicit input from State educational  
6           agencies, local educational agencies, consumer advo-  
7           cacy groups, physicians specializing in lung disease,  
8           addiction specialists, or any other entity determined  
9           appropriate by the Secretary, after consultation with  
10          the Secretary of Education and the Director of the  
11          Centers for Disease Control and Prevention.

12          (3) REPORT.—Not later than 1 year after the  
13          date of enactment of this Act, the Secretary shall  
14          prepare and submit, to the Committee on Health,  
15          Education, Labor, and Pensions of the Senate and  
16          the Committee on Education and the Workforce of  
17          the House of Representatives, a report on each  
18          study conducted under paragraph (1). Such report  
19          shall include recommendations for such legislative  
20          and administrative actions as such Secretary deter-  
21          mines to be appropriate.

22          (b) FTC STUDIES.—Notwithstanding any other pro-  
23          vision of law, if the Federal Trade Commission undertakes  
24          any study regarding the marketing effects of tobacco prod-  
25          ucts, the Federal Trade Commission shall ensure that the

1 study addresses the marketing effects of electronic nico-  
2 tine delivery systems.

3 (c) DEFINITIONS.—In this section:

4 (1) ELECTRONIC NICOTINE DELIVERY SYS-  
5 TEM.—The term “electronic nicotine delivery sys-  
6 tem” means any electronic nicotine delivery system,  
7 including e-cigarettes.

8 (2) ESEA DEFINITIONS.—The terms “local  
9 educational agency” and “State educational agency”  
10 have the meanings given the terms in section 8101  
11 of the Elementary and Secondary Education Act of  
12 1965 (20 U.S.C. 7801)).

13 (3) SECRETARY.—The term “Secretary” means  
14 the Secretary of Health and Human Services, acting  
15 through the Commissioner of Food and Drugs.

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