116TH CONGRESS
2D SESSION

S. 1253

AN ACT

To apply requirements relating to delivery sales of cigarettes to delivery sales of electronic nicotine delivery systems, 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 ''Preventing Online Sales of E-Cigarettes to Children Act''.

SEC. 2. AMENDMENTS TO THE JENKINS ACT.

(a) IN GENERAL.—The Act entitled ''An Act to assist States in collecting sales and use taxes on cigarettes'', approved October 19, 1949 (commonly known as the ''Jenkins Act'') (15 U.S.C. 375 et seq.), is amended—

(1) in section 1 (15 U.S.C. 375)—

(A) in paragraph (2)(A)(ii)—

(i) by striking ''includes roll-your-own tobacco'' and inserting the following: ''includes—

''(I) roll-your-own tobacco'';

(ii) in subclause (I), as so designated, by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(II) an electronic nicotine delivery system.'';

(B) by redesignating paragraphs (7) through (14) as paragraphs (8) through (15), respectively; and

(C) by inserting after paragraph (6) the following:

''(7) ELECTRONIC NICOTINE DELIVERY SYSTEM.—The term 'electronic nicotine delivery system'—

''(A) means any electronic device that, through an aerosolized solution, delivers nicotine, flavor, or any other substance to the user inhaling from the device;

''(B) includes—

''(i) an e-cigarette;

''(ii) an e-hookah;

''(iii) an e-cigar;

''(iv) a vape pen;

''(v) an advanced refillable personal vaporizer;

''(vi) an electronic pipe; and

''(vii) any component, liquid, part, or accessory of a device described in subparagraph (A), without regard to whether the component, liquid, part, or accessory is sold separately from the device; and

''(C) does not include a product that is—

''(i) approved by the Food and Drug Administration for—

''(I) sale as a tobacco cessation product; or

''(II) any other therapeutic purpose; and

''(ii) marketed and sold solely for a purpose described in clause (i).''; and

(2) in section 2A(b)(1) (15 U.S.C. 376a(b)(1)), by inserting ''NICOTINE/'' after ''CIGARETTES/''.

(b) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the date that is 90 days after the date of enactment of this Act.

(c) RULE OF CONSTRUCTION.—Nothing in this section, or an amendment made by this section, may be construed to affect or otherwise alter any provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), including its implementing regulations.

SEC. 3. NONMAILABILITY OF ELECTRONIC NICOTINE DELIVERY SYSTEMS.

(a) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the United States Postal Service shall promulgate regulations to clarify the applicability of the prohibition on mailing of cigarettes under section 1716E of title 18, United States Code, to electronic nicotine delivery systems, in accordance with the amendment to the definition of ''cigarette'' made by section 2.

(b) EFFECTIVE DATE.—The prohibition on mailing of cigarettes under section 1716E of title 18, United States Code, shall apply to electronic nicotine delivery systems on and after the date on which the United States Postal Service promulgates regulations under subsection (a) of this section.

SEC. 4. UNDERSTANDING THE IMPACT OF E-CIGARETTE USE BY ADOLESCENTS AND YOUNG ADULTS.

(a) STUDY.—The National Institutes of Health, in coordination with other appropriate agencies, shall conduct a study on the short-term and long-term health impacts of e-cigarette use by youth and young adults under 21 years of age, that includes the following:

(1) An examination of the health impacts of using liquids obtained from the legal market, including liquids that may not have premarket approval from the Food and Drug Administration, compared to liquids obtained illicitly.

(2) A determination of the precise relationship between underage vaping and underage smoking, which may include using national survey data, in which the reporting of smoking and vaping usage classifications (such as current users, former users, or never users) shall be integrated and not treated as separate or unrelated categories.

(3) A determination of the precise relationship between vaping and smoking among young adults, who are 21 to 24 years of age, using national survey data, in which the reporting of smoking and vaping usage classifications (such as current users, former users, or never users) shall be integrated and not treated as separate or unrelated categories.

(4) An examination of e-cigarette usage data from cities, localities, and States that have adopted e-cigarette product bans to evaluate—

(A) the proportion of e-cigarette users in those areas who return to smoking combustible cigarettes;

(B) the proportion of e-cigarette users in those areas who access products from illicit markets; and

(C) the proportion of e-cigarette users in those areas who stop using all nicotine products or reduce their overall nicotine product use.

(5) A determination of the frequency of use of each specific and multiple tobacco products among high school students in the United States, including—

(A) the number of high school students who use each specific and multiple tobacco products less than 20 days per month; and

(B) the number of high school students who use each specific and multiple tobacco products 20 or more days per month.

(6) An examination of the rates of underage e-cigarette use in cities, localities, and States that have adopted Tobacco 21 laws prior to the date of enactment of the Further Consolidated Appropriations Act, 2020 (Public Law 116–94).

(7) An examination of illegal smuggling of tobacco products in cities, localities, and States that have—

(A) banned such products;

(B) enacted taxes on such products that are higher than the national median; or

(C) enacted other legal restrictions on such products.

(8) A determination of how prevalence estimates of tobacco use in the National Youth Tobacco Survey differ from prevalence estimates of tobacco use in other national surveys, including the Population Assessment of Tobacco and Health and the Knowledge Panel.

(9) A determination of the prevalence of the following high-risk behaviors among high school students, and their relationship, if any, to vaping and smoking:

(A) Using marijuana or alcohol.

(B) Binge drinking.

(C) Underage sexual activity.

(D) Using an electronic device while driving.

(E) Knowingly riding in a motor vehicle with a driver who was recently drinking.

(F) Seriously considering suicide.

(10) An examination of the role flavors play in youth initiation and use of e-cigarettes and other tobacco products.

(11) An examination of the risk of youth addiction to nicotine, including the impact of e-cigarettes that use nicotine salts.

(12) An examination of risks to youth of nicotine use and exposure to harmful and potentially harmful constituents emitted from some e-cigarettes, including flavorings used in e-cigarettes.

(13) A determination of a credible estimate of the difference in health risks between combustible cigarette smoking and vaping, if a valid estimate can

be made, to inform tobacco regulation in the United States, taking into account—

(A) the findings of the British Royal College of Physicians in their 2016 report, ''Nicotine without smoke: Tobacco harm reduction'';

(B) the article entitled ''Invalidity of an Oft-Cited Estimate of the Relative Harms of Electronic Cigarettes'' published in the American Journal of Public Health in February 2020;

(C) the findings of the National Academies of Sciences, Engineering, and Medicine in their 2018 report, ''Public Health Consequences of E-Cigarettes'';

(D) relevant reports and advisories of the Surgeon General; and

(E) other peer reviewed research.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the National Institutes of Health shall submit a report to Congress on the findings of the study required to be conducted under subsection (a).

(2) REQUIREMENT.—Not later than 90 days after the date on which the report required under

paragraph (1) is submitted, all data, research products, and reports from the study required to be conducted under subsection (a) shall be made publicly available online.

(c) NO NEW FUNDS AUTHORIZED.—No additional funds are authorized to be appropriated to carry out this section.

Passed the Senate July 2, 2020.

Attest:

Secretary.

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