

116TH CONGRESS
1ST SESSION

S. 3096

To amend the Public Health Service Act to authorize the Director of the Centers for Disease Control and Prevention to develop a program to prevent the use of electronic nicotine delivery systems among students in middle and high schools, to award grants to State and local health agencies to implement such program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 18, 2019

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Public Health Service Act to authorize the Director of the Centers for Disease Control and Prevention to develop a program to prevent the use of electronic nicotine delivery systems among students in middle and high schools, to award grants to State and local health agencies to implement such program, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Providing Resources
3 to End the Vaping Epidemic Now for Teenagers Act of
4 2020” or the “PREVENT Act of 2020”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) High school e-cigarette use increased by
8 135 percent between 2017 and 2019.

9 (2) Middle school e-cigarette use increased by
10 approximately 218 percent between 2017 and 2019.

11 (3) Results from the National Youth Tobacco
12 Survey of the Centers for Disease Control and Pre-
13 vention (in this section referred to as “CDC”) and
14 the Food and Drug Administration (in this section
15 referred to as “FDA”) published in December 2019
16 show that 27.5 percent of high school students and
17 10.5 percent of middle school students reported
18 using an e-cigarette in the previous 30 days, up
19 from 20.8 percent and 4.9 percent, respectively, in
20 2018.

21 (4) In 2019, more than one-third (34.2 percent)
22 of high school e-cigarette users reported using e-cig-
23 arette products frequently, on 20 to 30 days in the
24 past month.

25 (5) The CDC, the FDA, the Department of
26 Health and Human Services, the Surgeon General,

1 and various State and local health authorities have
2 determined the skyrocketing e-cigarette use amongst
3 American youth to be an “epidemic”.

4 (6) According to the CDC, the use of nicotine
5 among adolescents can be detrimental to memory
6 making, learning, and behavior, and e-cigarette use
7 has been linked to lung conditions and mysterious
8 illness.

9 (7) According to data from the FDA’s Popu-
10 lation Assessment of Tobacco and Health Study,
11 youth e-cigarette use is associated with more than
12 four times the odds of trying cigarettes and nearly
13 three times the odds of current cigarette use.

14 (8) The CDC and FDA continue to reiterate
15 that the use of any tobacco product, including e-
16 cigarettes, is unsafe for young people.

17 **SEC. 3. GRANT PROGRAM TO PREVENT THE USE OF ELEC-**
18 **TRONIC NICOTINE DELIVERY SYSTEMS IN**
19 **MIDDLE AND HIGH SCHOOLS.**

20 Title III of the Public Health Service Act is amended
21 by inserting after section 317T of such Act (42 U.S.C.
22 247b–22) the following:

1 **“SEC. 317U. GRANT PROGRAM TO PREVENT THE USE OF**
 2 **ELECTRONIC NICOTINE DELIVERY SYSTEMS**
 3 **IN MIDDLE AND HIGH SCHOOLS.**

4 “(a) ESTABLISHMENT.—The Secretary, acting
 5 through the Director, in coordination with the Commis-
 6 sioner of Food and Drugs, shall—

7 “(1) develop a program to prevent the use of
 8 electronic nicotine delivery systems among students
 9 in middle and high schools; and

10 “(2) award grants to eligible entities to imple-
 11 ment such program in the geographic area served by
 12 such agencies and organizations.

13 “(b) ELIGIBLE ENTITIES.—To seek a grant under
 14 this section, an entity shall be—

15 “(1) a State or local health agency;

16 “(2) a nonprofit organization; or

17 “(3) if the grant is to serve students in a rural
 18 area, a partnership of—

19 “(A) an entity described in paragraph (1)
 20 or (2); and

21 “(B) a local educational agency or a hos-
 22 pital.

23 “(c) PROGRAM REQUIREMENTS.—The program de-
 24 veloped under subsection (a)(1) to prevent the use of elec-
 25 tronic nicotine delivery systems among students in middle
 26 and high schools shall address each of the following:

1 “(1) Training for school personnel to identify
2 and prevent the use by youth of electronic nicotine
3 delivery systems.

4 “(2) Creating and distributing educational re-
5 sources for preventing the use of electronic nicotine
6 delivery systems, designed for students, parents, and
7 school personnel.

8 “(3) Social media and marketing campaigns to
9 educate students on the health risks of the use of
10 electronic nicotine delivery systems and nicotine ad-
11 diction, to be designed by the Centers for Disease
12 Control and Prevention and implemented by grant-
13 ees in partnership with private advertising compa-
14 nies, nonprofit organizations, and advocacy organiza-
15 tions that specialize in youth substance use preven-
16 tion and addiction treatment.

17 “(4) Resources for students on how to commu-
18 nicate with their peers on the dangers of e-cigarette
19 use.

20 “(5) Partnering with school counseling per-
21 sonnel to assist students impacted by youth vaping.

22 “(6) Offering public health resources and coun-
23 seling to help treat youth nicotine addiction and re-
24 covery.

1 “(d) PRIORITY.—In awarding grants under this sec-
2 tion, the Secretary shall give priority to eligible entities
3 proposing to serve underserved populations with the great-
4 est use of vaping products.

5 “(e) APPLICATION.—To seek a grant under sub-
6 section (a)(2), an eligible entity shall submit an applica-
7 tion at such time, in such manner, and containing such
8 information as the Director may require.

9 “(f) GEOGRAPHIC DISTRIBUTION.—In awarding
10 grants under this section, the Secretary shall ensure that
11 such grants are distributed equitably across urban and
12 rural areas.

13 “(g) CONSULTATION.—As a condition on receipt of
14 a grant under subsection (a)(2), an eligible entity shall
15 agree that, in carrying out its program funded through
16 the grant, the agency will consult with the following:

17 “(1) Public health, health care, and youth
18 vaping prevention advocacy organizations, and orga-
19 nizations representing educators.

20 “(2) Organizations that specialize in addiction
21 prevention and treatment.

22 “(3) Mental health and medical specialists, in-
23 cluding professionals who specialize in child develop-
24 ment.

1 “(4) School principals and other school admin-
2 istrators.

3 “(h) REPORTING.—

4 “(1) BY GRANTEES.—As a condition on the re-
5 ceipt of a grant under subsection (a)(2), an eligible
6 entity shall agree to submit to the Director a report
7 annually over the grant period. Each such report
8 shall address the following:

9 “(A) The greatest obstacles in imple-
10 menting the program developed under sub-
11 section (a)(1).

12 “(B) The greatest obstacles in preventing
13 the use by youth of electronic nicotine delivery
14 systems.

15 “(C) Additional resources are needed to
16 address the popularity of electronic delivery sys-
17 tems and youth vaping culture.

18 “(2) REPORTING BY CDC.—Not later than 2
19 years after the program is developed pursuant to
20 subsection (a)(1), and annually thereafter, the Di-
21 rector shall submit to Congress a report on the fol-
22 lowing:

23 “(A) How the funds made available for
24 carrying out this section were used in devel-
25 oping a program under subsection (a)(1) and

1 implementing such program through grants
2 under subsection (a)(2).

3 “(B) Which strategies or resources were
4 effective in preventing the use by youth of elec-
5 tronic nicotine delivery systems.

6 “(C) Which strategies or resources were
7 not effective in preventing the use by youth of
8 electronic nicotine delivery systems.

9 “(3) POSTING OF REPORTS AND COMPILED
10 FINDINGS.—The Director shall—

11 “(A) not later than 60 days after receiving
12 a report submitted by a grantee pursuant to
13 paragraph (1), summarize the key findings of
14 such report and post such summary on the pub-
15 lic internet website of the Centers for Disease
16 Control and Prevention; and

17 “(B) not later than 60 days after submit-
18 ting a report to Congress under paragraph (2),
19 summarize the key findings of the report and
20 post such summary on such public internet
21 website.

22 “(i) DEFINITIONS.—In this section:

23 “(1) The term ‘Director’ means the Director of
24 the Centers for Disease Control and Prevention.

1 “(2) The term ‘electronic nicotine delivery sys-
 2 tem’ has the meaning given to such term in section
 3 919A of the Federal Food, Drug, and Cosmetic Act.

4 “(j) FUNDING.—Out of amounts collected as fees
 5 under section 919A of the Federal Food, Drug, and Cos-
 6 metic Act, there are authorized to be appropriated to carry
 7 out this section the following:

8 “(1) For fiscal year 2021, \$200,000,000.

9 “(2) For each of fiscal years 2022 and 2023,
 10 the amount described in paragraph (1), adjusted by
 11 the percentage change in the Consumer Price Index
 12 for all urban consumers (all items; United States
 13 city average) between 2021 and the applicable
 14 year.”.

15 **SEC. 4. USER FEES RELATING TO ELECTRONIC NICOTINE**
 16 **DELIVERY SYSTEMS.**

17 (a) IN GENERAL.—Chapter IX of the Federal Food,
 18 Drug, and Cosmetic Act (21 U.S.C. 387 et seq.) is amend-
 19 ed by inserting after section 919 the following:

20 **“SEC. 919A. USER FEES RELATING TO ELECTRONIC NICO-**
 21 **TINE DELIVERY SYSTEMS.**

22 “(a) ESTABLISHMENT OF QUARTERLY FEE.—Begin-
 23 ning with fiscal year 2021, the Secretary, acting through
 24 the Commissioner of Food and Drugs, shall assess user
 25 fees on, and collect such fees from, each manufacturer and

1 importer of electronic nicotine delivery systems. The fees
 2 shall be assessed and collected with respect to each quarter
 3 of each fiscal year, and the total amount assessed and col-
 4 lected for a fiscal year shall be the amount specified in
 5 subsection (b)(1) for such year, subject to subsection (c).

6 “(b) ASSESSMENT OF USER FEE.—

7 “(1) AMOUNT OF ASSESSMENT.—The total
 8 amount of user fees authorized to be assessed and
 9 collected under subsection (a) for a fiscal year is the
 10 following, as applicable to the fiscal year involved:

11 “(A) For fiscal year 2021, \$200,000,000.

12 “(B) For fiscal year 2022 and fiscal year
 13 2023, the amount described in subparagraph
 14 (A), adjusted by the percentage change in the
 15 Consumer Price Index for all urban consumers
 16 (all items; United States city average) between
 17 2021 and the applicable year.

18 “(2) DETERMINATION OF USER FEE BY COM-
 19 PANY.—The total user fee to be paid by each manu-
 20 facturer or importer of electronic nicotine delivery
 21 systems shall be determined for each quarter pursu-
 22 ant to a formula developed by the Secretary.

23 “(3) TIMING OF ASSESSMENT.—The Secretary
 24 shall notify each manufacturer and importer of elec-
 25 tronic nicotine delivery systems subject to this sec-

tion of the amount of the quarterly assessment imposed on such manufacturer or importer under this subsection for each quarter of each fiscal year. Such notifications shall occur not later than 30 days prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made by the last day of the quarter involved.

“(4) CALCULATION OF MARKET SHARE.—Beginning not later than fiscal year 2020, and for each subsequent fiscal year, the Secretary shall ensure that the Food and Drug Administration is able to determine—

“(A) the annual amount of total sales in the electronic nicotine delivery system market of the United States; and

“(B) the applicable percentage shares under paragraph (2).

“(c) CREDITING AND AVAILABILITY OF FEES.—

“(1) IN GENERAL.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration—Salaries and

1 Expenses' account without fiscal year limitation to
2 such appropriation account for salaries and expenses
3 with such fiscal year limitation.

4 “(2) AVAILABILITY.—Fees appropriated under
5 paragraph (3) shall be—

6 “(A) transferred to the Centers for Disease
7 Control and Prevention; and

8 “(B) available only for the purpose of pay-
9 ing the costs of carrying out section 317U of
10 the Public Health Service Act.

11 “(3) AUTHORIZATION OF APPROPRIATIONS.—
12 For fiscal year 2021 and each subsequent fiscal
13 year, there is authorized to be appropriated for fees
14 under this section an amount equal to the amount
15 specified in subsection (b)(1) for the fiscal year.

16 “(d) APPLICABILITY TO FISCAL YEAR 2020.—If the
17 date of enactment of the Providing Resources to End the
18 Vaping Epidemic Now for Teenagers Act of 2020 occurs
19 during fiscal year 2021, the following applies:

20 “(1) The Secretary shall determine the fees
21 that would apply for a single quarter of such fiscal
22 year according to the application of subsection (b) to
23 the amount specified in paragraph (1)(A) of such
24 subsection (referred to in this subsection as the
25 ‘quarterly fee amount’).

1 “(2) For the quarter in which such date of en-
2 actment occurs and any preceding quarter of fiscal
3 year 2021, fees shall not be assessed or collected
4 under this section.

5 “(3) The amount specified in subsection
6 (b)(1)(A) is deemed to be reduced by the quarterly
7 amount for each quarter for which fees are not as-
8 sessed or collected by operation of paragraph (3).

9 “(4) For any quarter in fiscal year 2021 fol-
10 lowing the quarter in which the date of enactment
11 of the Providing Resources to End the Vaping Epi-
12 demic Now for Teenagers Act of 2020 occurs, the
13 full quarterly fee amount shall be assessed and col-
14 lected.”.

15 (b) ENFORCEMENT.—

16 (1) IN GENERAL.—Section 902(4) of the Fed-
17 eral Food, Drug, and Cosmetic Act (21 U.S.C.
18 387b(4)) is amended by inserting “, or the manufac-
19 turer or importer of electronic nicotine delivery sys-
20 tems fails to pay a user fee assessed to such manu-
21 facturer or importer pursuant to section 919A by
22 the date specified in section 919A or by the 30th
23 day after final agency action on a resolution of any
24 dispute as to the amount of such fee” before the
25 semicolon.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall take effect on the later of Oc-
3 tober 1, 2021, or the date of enactment of this Act.

4 (c) DEFINITION.—Section 900 of the Federal Food,
5 Drug, and Cosmetic Act (21 U.S.C. 387) is amended—

6 (1) by redesignating paragraphs (8) through
7 (22) as paragraphs (9) through (23), respectively;
8 and

9 (2) by inserting after paragraph (7) the fol-
10 lowing:

11 “(8) ELECTRONIC NICOTINE DELIVERY SYS-
12 TEM.—The term ‘electronic nicotine delivery sys-
13 tem’—

14 “(A) means a tobacco product that is an
15 electronic device that delivers nicotine, flavor, or
16 another substance via an aerosolized solution to
17 the user inhaling from the device (including e-
18 cigarettes, e-hookah, e-cigars, vape pens, ad-
19 vanced refillable personal vaporizers, and elec-
20 tronic pipes) and any component, liquid, part,
21 or accessory of such a device, whether or not
22 sold separately; and

23 “(B) does not include a product that is ap-
24 proved by the Food and Drug Administration

- 1 for sale as a tobacco cessation product or for
- 2 another therapeutic purpose.”.

