

116TH CONGRESS  
1ST SESSION

# S. 655

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

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## IN THE SENATE OF THE UNITED STATES

MARCH 5, 2019

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

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## A BILL

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

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

7 **SEC. 2. FINDINGS.**

8       Congress finds as follows:

9           (1) Tobacco use almost always begins during  
10       adolescence and, because nicotine is addictive, most

1 youth tobacco users continue to use tobacco as  
2 adults, even if they intended to quit.

3 (2) According to the Surgeon General, “the use  
4 of products containing nicotine in any form among  
5 youth, including e-cigarettes, is unsafe” and “nico-  
6 tine exposure during adolescence can cause addiction  
7 and can harm the developing brain.”

8 (3) In 2018, youth e-cigarette use increased by  
9 78 percent among high school students and by 48  
10 percent among middle school students. More than  
11 3,600,000 youth currently use e-cigarettes, an in-  
12 crease of 1,500,000 high school and middle school  
13 students in one year.

14 (4) In 2018, 28 percent of high school e-ciga-  
15 rette users and 16 percent of middle school e-ciga-  
16 rette users reported frequent use of e-cigarettes,  
17 using e-cigarettes on at least 20 of the preceding 30  
18 days.

19 (5) Rising use of e-cigarettes among youth is  
20 hindering progress in reducing youth tobacco use.  
21 The use of any tobacco product increased by 38 per-  
22 cent among high school students and 29 percent  
23 among middle school students between 2017 and  
24 2018.

1           (6) Both the Surgeon General and the Commis-  
2           sioner of Food and Drugs have called the recent  
3           surge in youth e-cigarettes use an “epidemic”.

4           (7) The Surgeon General issued an advisory in  
5           2018 emphasizing the need to take immediate action  
6           to stem the youth e-cigarette epidemic and to protect  
7           youth from a lifetime of nicotine addiction and re-  
8           lated health risks.

9           (8) Youth use of cigars is a public health con-  
10          cern. High school boys smoke cigars at a higher rate  
11          than cigarettes (9 percent for cigars and 7.6 percent  
12          for cigarettes).

13          (9) Flavors play a significant role in attracting  
14          youth to tobacco products and make such products  
15          easier to use by masking the harshness of tobacco  
16          products.

17          (10) A 2017 study identified more than 15,000  
18          unique e-cigarette flavors available online. E-ciga-  
19          rettes come in flavors such as gummy bear, cotton  
20          candy, and fruit loops.

21          (11) The number of unique cigar flavor names  
22          more than doubled, from 108 to 250, between 2008  
23          and 2015, and flavored cigars made up more than  
24          half of the convenience store cigar market in 2015.  
25          Cigars come in flavors such as chocolate, water-

1 melon, and tropical fusion and are sold in conven-  
2 ience stores for as little as 3 for 99 cents.

3 (12) Youth often begin tobacco use with a fla-  
4 vored product. Eighty-one percent of youth who have  
5 ever used a tobacco product started with a flavored  
6 tobacco product.

7 (13) Flavors are a primary reason why youth  
8 use e-cigarettes and cigars. Eighty-two percent of  
9 current youth e-cigarette users and 74 percent of  
10 current youth cigar smokers said they used these  
11 products “because they come in flavors I like”.

12 (14) In 2018, the Food and Drug Administra-  
13 tion and the Federal Trade Commission took action  
14 against some deceptive e-liquid products that look  
15 like kid-friendly juice boxes, cookies, and candy.  
16 Many similar products remain on the market.

17 (15) The American Association of Poison Con-  
18 trol Centers reported more than 3100 calls in 2018  
19 due to exposure to e-liquids, and the American  
20 Academy of Pediatrics has warned about the dan-  
21 gers of accidental poisonings because of the appeal  
22 of the packaging of flavored products.

23 (16) Curbing the use of flavors in tobacco prod-  
24 ucts will help to protect youth from nicotine addic-



1           bacco product, tobacco smoke, or aerosol  
2           emitted from the product. Nothing in this  
3           subparagraph shall be construed to limit  
4           the Secretary’s authority to take action  
5           under this section or other provisions of  
6           this Act applicable to any artificial or nat-  
7           ural flavor, herb, or spice not specified in  
8           this subparagraph.

9           “(ii) EXCEPTIONS.—An electronic nic-  
10          otine delivery system component or part  
11          shall not contain or use an artificial or  
12          natural flavor (other than tobacco) that is  
13          a characterizing flavor of the product or its  
14          aerosol unless the Secretary issues an  
15          order finding that a manufacturer has  
16          demonstrated that use of the character-  
17          izing flavor—

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

21                   “(II) will not increase the likeli-  
22                   hood of youth initiation of nicotine or  
23                   tobacco products; and

1                   “(III) will not increase the likeli-  
2                   hood of harm to the person using the  
3                   characterizing flavor.”.

4           (b) DEFINITIONS.—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); and

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

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

13                   “(A) means any electronic device that de-  
14                   livers nicotine, flavor, or another substance via  
15                   an aerosolized solution to the user inhaling  
16                   from the device (including e-cigarettes, e-hook-  
17                   ah, e-cigars, vape pens, advanced refillable per-  
18                   sonal vaporizers, and electronic pipes) and any  
19                   component, liquid, part, or accessory of such a  
20                   device, whether or not sold separately; and

21                   “(B) does not include a product that—

22                           “(i) is approved by the Food and  
23                           Drug Administration for sale as a tobacco  
24                           cessation product or for another thera-  
25                           peutic purpose; and

1                   “(ii) is marketed and sold solely for a  
2                   purpose described in (i).”.

3           (c) CONFORMING AMENDMENT.—Section 9(1) of the  
4 Comprehensive Smokeless Tobacco Health Education Act  
5 of 1986 (15 U.S.C. 4408(1)) is amended by striking “sec-  
6 tion 900(18)” and inserting “section 900(19)”.

7           (d) EFFECTIVE DATE.—The amendments made by  
8 this section shall take effect 1 year after the date of enact-  
9 ment of this Act.

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