

116TH CONGRESS  
1ST SESSION

# H. R. 1498

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2019

Ms. DEGETTE (for herself and Mr. RASKIN) introduced the following bill;  
which was referred to the Committee on Energy and Commerce

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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  
4 use of products containing nicotine in any form  
5 among youth, including e-cigarettes, is unsafe” and  
6 “Nicotine exposure during adolescence can cause ad-  
7 diction 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 3.6 million youth currently use e-cigarettes, an in-  
12 crease of 1.5 million 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 youth use of e-cigarettes is hindering  
20 progress in reducing youth tobacco use. The use of  
21 any tobacco product increased by 38 percent among  
22 high school students and 29 percent among middle  
23 school students between 2017 and 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 in 2018 issued an ad-  
5           visory emphasizing the need to take immediate ac-  
6           tion to stem the youth e-cigarette epidemic and to  
7           protect kids from a lifetime of nicotine addiction and  
8           related 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          kids to tobacco products and make them easier to  
15          use by masking the harshness of tobacco products.

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

20          (11) The number of unique cigar flavor names  
21          more than doubled, from 108 to 250, between 2008  
22          and 2015, and flavored cigars made up more than  
23          half of the convenience store cigar market in 2015.  
24          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 (FDA) and the Federal Trade Commission  
14 (FTC) took action against some deceptive e-liquid  
15 products that look like kid-friendly juice boxes, cook-  
16 ies, and candy. Many similar products remain on the  
17 market.

18 (15) The American Association of Poison Con-  
19 trol Centers reported more than 3,100 calls in 2018  
20 due to exposure to e-liquids, and the American  
21 Academy of Pediatrics has warned about the dan-  
22 gers of accidental poisonings because of the appeal  
23 of the packaging of flavored products.

24 (16) Curbing the use of flavors in tobacco prod-  
25 ucts will help to protect kids from nicotine addiction

1 and tobacco-caused diseases such as cancer, heart  
2 disease, and respiratory disease.

3 **SEC. 3. ADDITIONAL RESTRICTIONS ON USE OF TOBACCO**  
4 **FLAVORS.**

5 (a) TOBACCO PRODUCT STANDARDS.—Section  
6 907(a)(1) of the Federal Food, Drug, and Cosmetic Act  
7 (21 U.S.C. 387g) is amended—

8 (1) by redesignating subparagraph (B) as sub-  
9 paragraph (C); and

10 (2) by inserting after subparagraph (A) the fol-  
11 lowing:

12 “(B) SPECIAL RULE FOR TOBACCO PROD-  
13 UCTS OTHER THAN CIGARETTES.—

14 “(i) IN GENERAL.—Except as pro-  
15 vided in clause (ii), a tobacco product that  
16 is not a cigarette, or any component, part,  
17 or accessory of such a product, shall not  
18 contain, as a constituent (including a  
19 smoke or aerosol constituent) or additive,  
20 an artificial or natural flavor (other than  
21 tobacco) or an herb or spice (including  
22 menthol, strawberry, grape, orange, clove,  
23 cinnamon, pineapple, vanilla, coconut, lico-  
24 rice, cocoa, chocolate, cherry, and coffee)  
25 that is a characterizing flavor of the to-

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 clause (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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