

116<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1253

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## AN ACT

To apply requirements relating to delivery sales of cigarettes to delivery sales of 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Preventing Online  
3 Sales of E-Cigarettes to Children Act”.

4 **SEC. 2. AMENDMENTS TO THE JENKINS ACT.**

5 (a) IN GENERAL.—The Act entitled “An Act to assist  
6 States in collecting sales and use taxes on cigarettes”, ap-  
7 proved October 19, 1949 (commonly known as the “Jen-  
8 kins Act”) (15 U.S.C. 375 et seq.), is amended—

9 (1) in section 1 (15 U.S.C. 375)—

10 (A) in paragraph (2)(A)(ii)—

11 (i) by striking “includes roll-your-own  
12 tobacco” and inserting the following: “in-  
13 cludes—

14 “(I) roll-your-own tobacco”;

15 (ii) in subclause (I), as so designated,  
16 by striking the period at the end and in-  
17 serting “; and”; and

18 (iii) by adding at the end the fol-  
19 lowing:

20 “(II) an electronic nicotine deliv-  
21 ery system.”;

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

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

1           “(7) ELECTRONIC NICOTINE DELIVERY SYS-  
2           TEM.—The term ‘electronic nicotine delivery sys-  
3           tem’—

4           “(A) means any electronic device that,  
5           through an aerosolized solution, delivers nico-  
6           tine, flavor, or any other substance to the user  
7           inhaling from the device;

8           “(B) includes—

9           “(i) an e-cigarette;

10          “(ii) an e-hookah;

11          “(iii) an e-cigar;

12          “(iv) a vape pen;

13          “(v) an advanced refillable personal  
14          vaporizer;

15          “(vi) an electronic pipe; and

16          “(vii) any component, liquid, part, or  
17          accessory of a device described in subpara-  
18          graph (A), without regard to whether the  
19          component, liquid, part, or accessory is  
20          sold separately from the device; and

21          “(C) does not include a product that is—

22          “(i) approved by the Food and Drug  
23          Administration for—

24          “(I) sale as a tobacco cessation  
25          product; or

1                   “(II) any other therapeutic pur-  
2                   pose; and

3                   “(ii) marketed and sold solely for a  
4                   purpose described in clause (i).”]; and

5                   (2) in section 2A(b)(1) (15 U.S.C. 376a(b)(1)),  
6                   by inserting “NICOTINE/” after “CIGARETTES/  
7                   ”.

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

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

16                  **SEC. 3. NONMAILABILITY OF ELECTRONIC NICOTINE DE-**  
17                  **LIVERY SYSTEMS.**

18                  (a) REGULATIONS.—Not later than 120 days after  
19                  the date of enactment of this Act, the United States Postal  
20                  Service shall promulgate regulations to clarify the applica-  
21                  bility of the prohibition on mailing of cigarettes under sec-  
22                  tion 1716E of title 18, United States Code, to electronic  
23                  nicotine delivery systems, in accordance with the amend-  
24                  ment to the definition of “cigarette” made by section 2.

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

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

9 (a) STUDY.—The National Institutes of Health, in  
10 coordination with other appropriate agencies, shall con-  
11 duct a study on the short-term and long-term health im-  
12 pacts of e-cigarette use by youth and young adults under  
13 21 years of age, that includes the following:

14 (1) An examination of the health impacts of  
15 using liquids obtained from the legal market, includ-  
16 ing liquids that may not have premarket approval  
17 from the Food and Drug Administration, compared  
18 to liquids obtained illicitly.

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

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

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

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

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

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

20           (5) A determination of the frequency of use of  
21 each specific and multiple tobacco products among  
22 high school students in the United States, includ-  
23 ing—

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

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

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

12 (7) An examination of illegal smuggling of to-  
13 bacco products in cities, localities, and States that  
14 have—

15 (A) banned such products;

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

18 (C) enacted other legal restrictions on such  
19 products.

20 (8) A determination of how prevalence esti-  
21 mates of tobacco use in the National Youth Tobacco  
22 Survey differ from prevalence estimates of tobacco  
23 use in other national surveys, including the Popu-  
24 lation Assessment of Tobacco and Health and the  
25 Knowledge Panel.

1           (9) A determination of the prevalence of the fol-  
2           lowing high-risk behaviors among high school stu-  
3           dents, and their relationship, if any, to vaping and  
4           smoking:

5                   (A) Using marijuana or alcohol.

6                   (B) Binge drinking.

7                   (C) Underage sexual activity.

8                   (D) Using an electronic device while driv-  
9           ing.

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

12                  (F) Seriously considering suicide.

13           (10) An examination of the role flavors play in  
14           youth initiation and use of e-cigarettes and other to-  
15           bacco products.

16           (11) An examination of the risk of youth addic-  
17           tion to nicotine, including the impact of e-cigarettes  
18           that use nicotine salts.

19           (12) An examination of risks to youth of nico-  
20           tine use and exposure to harmful and potentially  
21           harmful constituents emitted from some e-cigarettes,  
22           including flavorings used in e-cigarettes.

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

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

3 (A) the findings of the British Royal Col-  
4 lege of Physicians in their 2016 report, “Nico-  
5 tine without smoke: Tobacco harm reduction”;

6 (B) the article entitled “Invalidity of an  
7 Oft-Cited Estimate of the Relative Harms of  
8 Electronic Cigarettes” published in the Amer-  
9 ican Journal of Public Health in February  
10 2020;

11 (C) the findings of the National Academies  
12 of Sciences, Engineering, and Medicine in their  
13 2018 report, “Public Health Consequences of  
14 E-Cigarettes”;

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

17 (E) other peer reviewed research.

18 (b) REPORT.—

19 (1) IN GENERAL.—Not later than 1 year after  
20 the date of enactment of this Act, the National In-  
21 stitutes of Health shall submit a report to Congress  
22 on the findings of the study required to be con-  
23 ducted under subsection (a).

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

1 paragraph (1) is submitted, all data, research prod-  
2 ucts, and reports from the study required to be con-  
3 ducted under subsection (a) shall be made publicly  
4 available online.

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

Passed the Senate July 2, 2020.

Attest:

*Secretary.*



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