

116TH CONGRESS
1ST SESSION

H. R. 293

To prevent and reduce the use of tobacco products, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2019

Ms. DELAURO introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on the Judiciary, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prevent and reduce the use of tobacco products, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Youth Vaping Preven-
5 tion Act of 2019”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—STOP TOBACCO SALES TO YOUTH

Sec. 101. Findings.
 Sec. 102. Amendments.
 Sec. 103. Exclusions regarding Indian tribes and tribal matters.
 Sec. 104. Severability.
 Sec. 105. Effective date.

TITLE II—ESTABLISHING EXCISE TAX EQUITY AMONG ALL TOBACCO PRODUCT TAX RATES

Sec. 201. Establishing excise tax equity among all tobacco product tax rates.

TITLE III—RESTRICTIONS ON USE OF TOBACCO FLAVORS

Sec. 301. Additional restrictions on use of tobacco flavors.

1 **TITLE I—STOP TOBACCO SALES** 2 **TO YOUTH**

3 **SEC. 101. FINDINGS.**

4 The Congress finds the following:

5 (1) Tobacco products cause numerous serious
 6 diseases, including cancer, heart disease, and res-
 7 piratory disease, and they contain nicotine, a highly
 8 addictive substance.

9 (2) According to the Surgeon General of the
 10 United States, adolescents are particularly vulner-
 11 able to the adverse effects of nicotine, and adoles-
 12 cent exposure to nicotine may have lasting adverse
 13 consequences for brain development.

14 (3) Youth use of electronic cigarettes and hook-
 15 ah (water pipe) has risen according to the National
 16 Youth Tobacco Survey released by the Centers for
 17 Disease Control and Prevention, and the Food and
 18 Drug Administration, in April 2015.

1 (4) Current use of electronic cigarettes among
2 high school students tripled from 4.5 percent in
3 2013 to 13.4 percent in 2014 (compared to 1.5 per-
4 cent in 2011); approximately 2,000,000 high school
5 students currently use these products.

6 (5) Current use of electronic cigarettes among
7 middle school students tripled from 1.1 percent in
8 2013 to 3.9 percent in 2014; approximately 450,000
9 middle school students currently use these products.

10 (6) Current use of hookah among high school
11 students increased from 4.1 percent in 2011 to 9.4
12 percent in 2014.

13 (7) Current use of cigars among high school
14 students was 8.2 percent in 2014 (1,200,000 stu-
15 dents). Current use of cigars among high school
16 boys was 10.8 percent, about the same rate at which
17 they smoke cigarettes (10.6 percent).

18 (8) The sale of electronic cigarettes, cigars,
19 hookah, and other tobacco products over the inter-
20 net, and through mail, fax, or phone orders, makes
21 it cheaper and easier for children to obtain these
22 products.

23 (9) Electronic cigarettes are being marketed in
24 ways that appeal to youth, in the form of advertising
25 using images that appeal to youth, advertisements

1 on television and the internet, and sponsorships of
2 events popular with youth, such as concerts and
3 sporting events.

4 (10) According to a study published in March
5 2015 in the Journal of the American Medical Asso-
6 ciation Pediatrics, 93.7 percent of youth partici-
7 pating in a study of internet electronic cigarette
8 sales successfully purchased electronic cigarettes be-
9 cause the websites lacked adequate age-verification
10 methods.

11 **SEC. 102. AMENDMENTS.**

12 Section 1 of the Act of October 19, 1949 (15 U.S.C.
13 375); commonly referred to as the “Jenkins Act”), is
14 amended—

15 (1) in paragraph (2)—

16 (A) in subparagraph (A)—

17 (i) in clause (i) by striking “and” at
18 the end;

19 (ii) in clause (ii) by striking the pe-
20 riod at the end and inserting “; and”; and

21 (iii) by adding at the end the fol-
22 lowing:

23 “(iii) includes electronic cigarettes.”;

24 and

25 (B) in subparagraph (B)—

1 (i) in the heading by striking “EX-
2 CEPTION” and inserting “INCLUSIONS”;

3 (ii) by striking “does not include” and
4 inserting “includes”; and

5 (iii) by inserting “and pipe tobacco
6 (as defined in section 5702 of the Internal
7 Revenue Code of 1986)” before the period
8 at the end; and

9 (2) by inserting after paragraph (6) the fol-
10 lowing:

11 “(6A) ELECTRONIC CIGARETTE.—The term
12 ‘electronic cigarette’ means any electronic device
13 that delivers nicotine, flavor, or other substance via
14 an aerosolized solution (including an electronic ciga-
15 rette, cigar, pipe, or hookah) to the user inhaling
16 from the device (including any component, liquid,
17 part, or accessory of such a device whether or not
18 sold separately) but excludes a product that—

19 “(A) is approved by the Food and Drug
20 Administration for sale as a tobacco cessation
21 product or for another therapeutic purpose; and

22 “(B) is marketed and sold solely for a pur-
23 pose approved as described in subparagraph
24 (A).”.

1 **SEC. 103. EXCLUSIONS REGARDING INDIAN TRIBES AND**
2 **TRIBAL MATTERS.**

3 (a) IN GENERAL.—Nothing in this Act or the amend-
4 ments made by this Act shall be construed to amend, mod-
5 ify, or otherwise affect—

6 (1) any agreements, compacts, or other inter-
7 governmental arrangements between any State or
8 local government and any government of an Indian
9 tribe (as that term is defined in section 4(e) of the
10 Indian Self-Determination and Education Assistance
11 Act (25 U.S.C. 450b(e))) relating to the collection of
12 taxes on cigarettes or smokeless tobacco sold in In-
13 dian country;

14 (2) any State laws that authorize or otherwise
15 pertain to any such intergovernmental arrangements
16 or create special rules or procedures for the collec-
17 tion of State, local, or tribal taxes on cigarettes or
18 smokeless tobacco sold in Indian country;

19 (3) any limitations under Federal or State law,
20 including Federal common law and treaties, on
21 State, local, and tribal tax and regulatory authority
22 with respect to the sale, use, or distribution of ciga-
23 rettes and smokeless tobacco by or to Indian tribes,
24 tribal members, tribal enterprises, or in Indian coun-
25 try;

1 (4) any Federal law, including Federal common
2 law and treaties, regarding State jurisdiction, or
3 lack thereof, over any tribe, tribal members, tribal
4 enterprises, tribal reservations, or other lands held
5 by the United States in trust for one or more Indian
6 tribes; or

7 (5) any State or local government authority to
8 bring enforcement actions against persons located in
9 Indian country.

10 (b) COORDINATION OF LAW ENFORCEMENT.—Noth-
11 ing in this Act or the amendments made by this Act shall
12 be construed to inhibit or otherwise affect any coordinated
13 law enforcement effort by one or more States or other ju-
14 risdictions, including Indian tribes, through interstate
15 compact or otherwise, that—

16 (1) provides for the administration of tobacco
17 product laws or laws pertaining to interstate sales or
18 other sales of tobacco products;

19 (2) provides for the seizure of tobacco products
20 or other property related to a violation of such laws;
21 or

22 (3) establishes cooperative programs for the ad-
23 ministration of such laws.

24 (c) TREATMENT OF STATE AND LOCAL GOVERN-
25 MENTS.—Nothing in this Act or the amendments made

1 by this Act shall be construed to authorize, deputize, or
 2 commission States or local governments as instrumental-
 3 ities of the United States.

4 (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—
 5 Nothing in this Act or the amendments made by this Act
 6 shall prohibit, limit, or restrict enforcement by the Attor-
 7 ney General of the United States of this Act or an amend-
 8 ment made by this Act within Indian country.

9 (e) AMBIGUITY.—Any ambiguity between the lan-
 10 guage of this section or its application and any other pro-
 11 vision of this Act shall be resolved in favor of this section.

12 (f) DEFINITIONS.—In this section—

13 (1) the term “Indian country” has the meaning
 14 given that term in section 1 of the Act of October
 15 19, 1949 (15 U.S.C. 375; commonly referred to as
 16 the “Jenkins Act”), as amended by this Act; and

17 (2) the term “tribal enterprise” means any
 18 business enterprise, regardless of whether incor-
 19 porated or unincorporated under Federal or tribal
 20 law, of an Indian tribe or group of Indian tribes.

21 **SEC. 104. SEVERABILITY.**

22 If any provision of this title, or any amendment made
 23 by this title, or the application thereof to any person or
 24 circumstance, is held invalid, the remainder of the title

1 and the application of the title to any other person or cir-
2 cumstance shall not be affected thereby.

3 **SEC. 105. EFFECTIVE DATE.**

4 This title, and the amendments made by this title,
5 shall take effect 90 days after the date of the enactment
6 of this Act.

7 **TITLE II—ESTABLISHING EXCISE**
8 **TAX EQUITY AMONG ALL TO-**
9 **BACCO PRODUCT TAX RATES**

10 **SEC. 201. ESTABLISHING EXCISE TAX EQUITY AMONG ALL**
11 **TOBACCO PRODUCT TAX RATES.**

12 (a) TAX PARITY FOR PIPE TOBACCO AND ROLL-
13 YOUR-OWN TOBACCO.—Section 5701(f) of the Internal
14 Revenue Code of 1986 is amended by striking “\$2.8311
15 cents” and inserting “\$24.78”.

16 (b) TAX PARITY FOR SMOKELESS TOBACCO.—

17 (1) Section 5701(e) of the Internal Revenue
18 Code of 1986 is amended—

19 (A) in paragraph (1), by striking “\$1.51”
20 and inserting “\$13.42”;

21 (B) in paragraph (2), by striking “50.33
22 cents” and inserting “\$5.37”; and

23 (C) by adding at the end the following:

1 “(3) SMOKELESS TOBACCO SOLD IN DISCRETE
2 SINGLE-USE UNITS.—On discrete single-use units,
3 \$50.33 per thousand.”.

4 (2) Section 5702(m) of such Code is amend-
5 ed—

6 (A) in paragraph (1), by striking “or chew-
7 ing tobacco” and inserting “, chewing tobacco,
8 or discrete single-use unit”;

9 (B) in paragraphs (2) and (3), by inserting
10 “that is not a discrete single-use unit” before
11 the period in each such paragraph; and

12 (C) by adding at the end the following:

13 “(4) DISCRETE SINGLE-USE UNIT.—The term
14 ‘discrete single-use unit’ means any product con-
15 taining tobacco that—

16 “(A) is not intended to be smoked; and

17 “(B) is in the form of a lozenge, tablet,
18 pill, pouch, dissolvable strip, or other discrete
19 single-use or single-dose unit.”.

20 (c) TAX PARITY FOR LARGE CIGARS.—

21 (1) IN GENERAL.—Paragraph (2) of section
22 5701(a) of the Internal Revenue Code of 1986 is
23 amended by striking “52.75 percent” and all that
24 follows through the period and inserting the fol-
25 lowing: “\$24.78 per pound and a proportionate tax

1 at the like rate on all fractional parts of a pound but
2 not less than 5.033 cents per cigar.”.

3 (2) GUIDANCE.—The Secretary of the Treas-
4 ury, or the Secretary’s delegate, may issue guidance
5 regarding the appropriate method for determining
6 the weight of large cigars for purposes of calculating
7 the applicable tax under section 5701(a)(2) of the
8 Internal Revenue Code of 1986.

9 (d) TAX PARITY FOR ROLL-YOUR-OWN TOBACCO
10 AND CERTAIN PROCESSED TOBACCO.—Subsection (o) of
11 section 5702 of the Internal Revenue Code of 1986 is
12 amended by inserting “, and includes processed tobacco
13 that is removed for delivery or delivered to a person other
14 than a person with a permit provided under section 5713,
15 but does not include removals of processed tobacco for ex-
16 portation” after “wrappers thereof”.

17 (e) CLARIFYING TAX RATE FOR OTHER TOBACCO
18 PRODUCTS.—

19 (1) IN GENERAL.—Section 5701 of the Internal
20 Revenue Code of 1986 is amended by adding at the
21 end the following new subsection:

22 “(i) OTHER TOBACCO PRODUCTS.—Any product not
23 otherwise described under this section that has been deter-
24 mined to be a tobacco product by the Food and Drug Ad-
25 ministration through its authorities under the Family

1 Smoking Prevention and Tobacco Control Act shall be
 2 taxed at a level of tax equivalent to the tax rate for ciga-
 3 rettes on an estimated per use basis as determined by the
 4 Secretary.”.

5 (2) ESTABLISHING PER USE BASIS.—For pur-
 6 poses of section 5701(i) of the Internal Revenue
 7 Code of 1986, not later than 12 months after the
 8 later of the date of the enactment of this Act or the
 9 date that a product has been determined to be a to-
 10 bacco product by the Food and Drug Administra-
 11 tion, the Secretary of the Treasury (or the Secretary
 12 of the Treasury’s delegate) shall issue final regula-
 13 tions establishing the level of tax for such product
 14 that is equivalent to the tax rate for cigarettes on
 15 an estimated per use basis.

16 (f) CLARIFYING DEFINITION OF TOBACCO PROD-
 17 UCTS.—

18 (1) IN GENERAL.—Subsection (c) of section
 19 5702 of the Internal Revenue Code of 1986 is
 20 amended to read as follows:

21 “(c) TOBACCO PRODUCTS.—The term ‘tobacco prod-
 22 ucts’ means—

23 “(1) cigars, cigarettes, smokeless tobacco, pipe
 24 tobacco, and roll-your-own tobacco, and

1 “(2) any other product subject to tax pursuant
2 to section 5701(i).”.

3 (2) CONFORMING AMENDMENTS.—Subsection
4 (d) of section 5702 of such Code is amended by
5 striking “cigars, cigarettes, smokeless tobacco, pipe
6 tobacco, or roll-your-own tobacco” each place it ap-
7 pears and inserting “tobacco products”.

8 (g) TAX RATES ADJUSTED FOR INFLATION.—Sec-
9 tion 5701 of such Code, as amended by subsection (e),
10 is amended by adding at the end the following new sub-
11 section:

12 “(j) INFLATION ADJUSTMENT.—

13 “(1) IN GENERAL.—In the case of any calendar
14 year beginning after 2019, the dollar amounts pro-
15 vided under this chapter shall each be increased by
16 an amount equal to—

17 “(A) such dollar amount, multiplied by

18 “(B) the cost-of-living adjustment deter-
19 mined under section 1(f)(3) for the calendar
20 year, determined by substituting ‘calendar year
21 2018’ for ‘calendar year 2016’ in subparagraph
22 (A)(ii) thereof.

23 “(2) ROUNDING.—If any amount as adjusted
24 under paragraph (1) is not a multiple of \$0.01, such

1 amount shall be rounded to the next highest multiple
2 of \$0.01.”.

3 (h) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as provided in para-
5 graphs (2) through (4), the amendments made by
6 this section shall apply to articles removed (as de-
7 fined in section 5702(j) of the Internal Revenue
8 Code of 1986) after the last day of the month which
9 includes the date of the enactment of this Act.

10 (2) DISCRETE SINGLE-USE UNITS AND PROC-
11 ESSED TOBACCO.—The amendments made by sub-
12 sections (b)(1)(C), (b)(2), and (d) shall apply to ar-
13 ticles removed (as defined in section 5702(j) of the
14 Internal Revenue Code of 1986) after the date that
15 is 6 months after the date of the enactment of this
16 Act.

17 (3) LARGE CIGARS.—The amendments made by
18 subsection (c) shall apply to articles removed after
19 December 31, 2019.

20 (4) OTHER TOBACCO PRODUCTS.—The amend-
21 ments made by subsection (e)(1) shall apply to prod-
22 ucts removed after the last day of the month which
23 includes the date that the Secretary of the Treasury
24 (or the Secretary of the Treasury’s delegate) issues

1 final regulations establishing the level of tax for
 2 such product.

3 **TITLE III—RESTRICTIONS ON** 4 **USE OF TOBACCO FLAVORS**

5 **SEC. 301. ADDITIONAL RESTRICTIONS ON USE OF TOBACCO** 6 **FLAVORS.**

7 (a) TOBACCO PRODUCT STANDARDS.—Section
 8 907(a)(1) of the Federal Food, Drug, and Cosmetic Act
 9 (21 U.S.C. 387g) is amended—

10 (1) by redesignating subparagraph (B) as sub-
 11 paragraph (C); and

12 (2) by inserting after subparagraph (A) the fol-
 13 lowing:

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

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

1 rice, cocoa, chocolate, cherry, and coffee)
2 that is a characterizing flavor of the to-
3 bacco product, tobacco smoke, or aerosol
4 emitted from the product. Nothing in this
5 subparagraph shall be construed to limit
6 the Secretary's authority to take action
7 under this section or other provisions of
8 this Act applicable to any artificial or nat-
9 ural flavor, herb, or spice not specified in
10 this subparagraph.

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

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

23 “(II) will not increase the likeli-
24 hood of youth initiation of nicotine or
25 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.

○