

113TH CONGRESS
2D SESSION

S. 2047

To prohibit the marketing of electronic cigarettes to children, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2014

Mrs. BOXER (for herself, Mr. DURBIN, Mr. HARKIN, Mr. BLUMENTHAL, Mr. MARKEY, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit the marketing of electronic cigarettes to children, 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 “Protecting Children
5 from Electronic Cigarette Advertising Act of 2014”.

6 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) According to the Food and Drug Adminis-
2 tration, because electronic cigarettes have not been
3 fully studied, consumers currently do not know—

4 (A) the potential risks of electronic ciga-
5 rettes when used as intended;

6 (B) how much nicotine or other potentially
7 harmful chemicals are being inhaled during use;
8 or

9 (C) if there are any benefits associated
10 with using these products.

11 (2) Most electronic cigarettes contain widely
12 varying levels of nicotine, which is a highly addictive
13 drug that impacts the cardiovascular system and can
14 be lethal when delivered in high doses.

15 (3) According to the Surgeon General, adoles-
16 cents are particularly vulnerable to the adverse ef-
17 fects of nicotine and adolescent exposure to nicotine
18 may have lasting adverse consequences for brain de-
19 velopment.

20 (4) Use of electronic cigarettes has risen in
21 youth according to a study by the Centers for Dis-
22 ease Control and Prevention that was released in
23 September 2013, which found that in one year, from
24 2011 to 2012, the percentage of middle and high

1 school students who had ever used electronic ciga-
2 rettes more than doubled.

3 (5) Electronic cigarette use may lead children
4 to become addicted to nicotine and could be a gate-
5 way to various tobacco products.

6 (6) Marketing of electronic cigarettes to youth
7 is occurring in the form of advertising using car-
8 toons and sponsorships of events popular with youth
9 such as concerts and sporting events.

10 (b) SENSE OF CONGRESS.—It is the sense of Con-
11 gress that the Federal Trade Commission should prohibit
12 the advertising, promoting, and marketing in commerce
13 of electronic cigarettes to children as an unfair or decep-
14 tive act or practice, in order to protect the health of the
15 youth of the United States.

16 **SEC. 3. PROHIBITION ON MARKETING OF ELECTRONIC**
17 **CIGARETTES TO CHILDREN.**

18 (a) DEFINITIONS.—In this section:

19 (1) CHILD.—The term “child” means an indi-
20 vidual who is under the age of 18 years.

21 (2) COMMERCE.—The term “commerce” has
22 the meaning given such term in section 4 of the
23 Federal Trade Commission Act (15 U.S.C. 44).

24 (3) ELECTRONIC CIGARETTE.—The term “elec-
25 tronic cigarette” means a battery-operated product

1 designed to deliver nicotine, flavor, or other chemi-
2 cals and that turns chemicals, such as nicotine, into
3 an aerosol that is inhaled by the user.

4 (b) PROHIBITION.—No person may advertise, pro-
5 mote, or market in commerce an electronic cigarette in
6 a manner that the person knows or should know will have
7 the effect of increasing the use of an electronic cigarette
8 by a child.

9 (c) ENFORCEMENT BY FEDERAL TRADE COMMIS-
10 SION.—

11 (1) UNFAIR OR DECEPTIVE ACT OR PRAC-
12 TICE.—A violation of subsection (b) shall be treated
13 as a violation of a rule defining an unfair or decep-
14 tive act or practice described under section
15 18(a)(1)(B) of the Federal Trade Commission Act
16 (15 U.S.C. 57a(a)(1)(B)).

17 (2) POWERS OF COMMISSION.—

18 (A) IN GENERAL.—The Federal Trade
19 Commission shall enforce this section in the
20 same manner, by the same means, and with the
21 same jurisdiction, powers, and duties as though
22 all applicable terms and provisions of the Fed-
23 eral Trade Commission Act (15 U.S.C. 41 et
24 seq.) were incorporated into and made a part of
25 this section.

1 (B) PRIVILEGES AND IMMUNITIES.—Any
2 person who violates this section shall be subject
3 to the penalties and entitled to the privileges
4 and immunities provided in the Federal Trade
5 Commission Act (15 U.S.C. 41 et seq.).

6 (C) RULEMAKING.—The Federal Trade
7 Commission may promulgate standards and
8 rules to carry out this section in accordance
9 with section 553 of title 5, United States Code.

10 (d) ENFORCEMENT BY STATES.—

11 (1) IN GENERAL.—In any case in which the at-
12 torney general of a State has reason to believe that
13 an interest of the residents of the State has been or
14 is threatened or adversely affected by the engage-
15 ment of any person subject to subsection (b) in a
16 practice that violates such subsection, the attorney
17 general of the State may, as *parens patriae*, bring
18 a civil action on behalf of the residents of the State
19 in an appropriate district court of the United
20 States—

21 (A) to enjoin further violation of such sub-
22 section by such person;

23 (B) to compel compliance with such sub-
24 section;

1 (C) to obtain damages, restitution, or other
2 compensation on behalf of such residents;

3 (D) to obtain such other relief as the court
4 considers appropriate; or

5 (E) to obtain civil penalties in the amount
6 determined under paragraph (2).

7 (2) CIVIL PENALTIES.—

8 (A) CALCULATION.—For purposes of im-
9 posing a civil penalty under paragraph (1)(E)
10 with respect to a person who violates subsection
11 (b), the amount determined under this para-
12 graph is the amount calculated by multiplying
13 the number of days that the person is not in
14 compliance with subsection (b) by an amount
15 not greater than \$16,000.

16 (B) ADJUSTMENT FOR INFLATION.—Be-
17 ginning on the date on which the Bureau of
18 Labor Statistics first publishes the Consumer
19 Price Index after the date that is 1 year after
20 the date of the enactment of this Act, and an-
21 nually thereafter, the amounts specified in sub-
22 paragraph (A) shall be increased by the per-
23 centage increase in the Consumer Price Index
24 published on that date from the Consumer
25 Price Index published the previous year.

1 (3) RIGHTS OF FEDERAL TRADE COMMIS-
2 SION.—

3 (A) NOTICE TO FEDERAL TRADE COMMIS-
4 SION.—

5 (i) IN GENERAL.—Except as provided
6 in clause (iii), the attorney general of a
7 State shall notify the Federal Trade Com-
8 mission in writing that the attorney gen-
9 eral intends to bring a civil action under
10 paragraph (1) not later than 10 days be-
11 fore initiating the civil action.

12 (ii) CONTENTS.—The notification re-
13 quired by clause (i) with respect to a civil
14 action shall include a copy of the complaint
15 to be filed to initiate the civil action.

16 (iii) EXCEPTION.—If it is not feasible
17 for the attorney general of a State to pro-
18 vide the notification required by clause (i)
19 before initiating a civil action under para-
20 graph (1), the attorney general shall notify
21 the Federal Trade Commission imme-
22 diately upon instituting the civil action.

23 (B) INTERVENTION BY FEDERAL TRADE
24 COMMISSION.—The Federal Trade Commission
25 may—

1 (i) intervene in any civil action
2 brought by the attorney general of a State
3 under paragraph (1); and

4 (ii) upon intervening—

5 (I) be heard on all matters arising in the civil action; and

6 (II) file petitions for appeal of a
7 decision in the civil action.
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9 (4) INVESTIGATORY POWERS.—Nothing in this
10 subsection may be construed to prevent the attorney
11 general of a State from exercising the powers conferred on the attorney general by the laws of the
12 State to conduct investigations, to administer oaths
13 or affirmations, or to compel the attendance of witnesses or the production of documentary or other
14 evidence.
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17 (5) PREEMPTIVE ACTION BY FEDERAL TRADE
18 COMMISSION.—If the Federal Trade Commission institutes a civil action or an administrative action
19 with respect to a violation of subsection (b), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with re-
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1 spect to which the Commission instituted such ac-
2 tion.

3 (6) VENUE; SERVICE OF PROCESS.—

4 (A) VENUE.—Any action brought under
5 paragraph (1) may be brought in—

6 (i) the district court of the United
7 States that meets applicable requirements
8 relating to venue under section 1391 of
9 title 28, United States Code; or

10 (ii) another court of competent juris-
11 diction.

12 (B) SERVICE OF PROCESS.—In an action
13 brought under paragraph (1), process may be
14 served in any district in which the defendant—

15 (i) is an inhabitant; or

16 (ii) may be found.

17 (7) ACTIONS BY OTHER STATE OFFICIALS.—

18 (A) IN GENERAL.—In addition to civil ac-
19 tions brought by attorneys general under para-
20 graph (1), any other officer of a State who is
21 authorized by the State to do so may bring a
22 civil action under paragraph (1), subject to the
23 same requirements and limitations that apply
24 under this subsection to civil actions brought by
25 attorneys general.

1 (B) SAVINGS PROVISION.—Nothing in this
2 subsection may be construed to prohibit an au-
3 thorized official of a State from initiating or
4 continuing any proceeding in a court of the
5 State for a violation of any civil or criminal law
6 of the State.

7 (e) CONSTRUCTION.—Nothing in this section shall be
8 construed to limit or diminish the authority of the Food
9 and Drug Administration to regulate the marketing of
10 electronic cigarettes, including the marketing of electronic
11 cigarettes to children.

12 (f) RELATION TO STATE LAW.—This section shall
13 not be construed as superseding, altering, or affecting any
14 provision of law of a State, except to the extent that such
15 provision of law is inconsistent with the provisions of this
16 section, and then only to the extent of the inconsistency.

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