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118TH CONGRESS
1ST SESSION

H. R. 901

To require the Food and Drug Administration to prioritize enforcement of disposable electronic nicotine delivery system products.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2023

Mrs. CHERFILUS-MCCORMICK introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To require the Food and Drug Administration to prioritize enforcement of disposable electronic nicotine delivery system products.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Disposable ENDS Product Enforcement Act of 2023''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) In April 2020, the Food and Drug Administration issued guidance entitled ''Enforcement Priorities for Electronic Nicotine Delivery System

(ENDS) and Other Deemed Products on the Market Without Premarket Authorization''.

(2) In such guidance, Food and Drug Administration describes how the agency intends to prioritize enforcement against any flavored, cartridge-based electronic nicotine delivery system product (other than a tobacco- or menthol-flavored electronic nicotine delivery system product) marketed without authorization from the Food and Drug Administration.

(3) In defining the term ''cartridge-based ENDS product,'' the guidance cites ''self-contained, disposable products'' as not being with the scope of this prioritized category.

(4) The guidance explains: ''FDA is continuously evaluating new information and adjusting its enforcement priorities in light of the best available data, and it will continue to do so with respect to these products. FDA will take appropriate action regarding tobacco products that are marketed without premarket authorization, including as warranted based on changed circumstances, new information, or to better address minors' use of those products''.

(5) In November 2022, the Food and Drug Administration and the Centers for Disease Control and Prevention released the findings from the 2022

National Youth Tobacco Survey. The data shows that self-contained disposable electronic nicotine delivery system products were the most common device type used by minors.

SEC. 3. UPDATED ENFORCEMENT PRIORITIZATION.

(a) GUIDANCE.—The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs (referred to in this Act as the ''Secretary''), shall not later than 90 days after the date of the enactment of this Act, update the final guidance entitled ''Enforcement Priorities for Electronic Nicotine Delivery System (ENDS) and Other Deemed Products on the Market Without Premarket Authorization'' issued in April 2020, to include a description of how the Secretary will also prioritize enforcement against disposable ENDS products, including such nicotine products not derived from tobacco.

(b) ENFORCEMENT.—Nothing in this section shall be construed as preventing the Secretary from prioritizing enforcement against disposable ENDS products, including nicotine products not derived from tobacco, in advance of updating the guidance referred to in paragraph (1), particularly with respect to such products that are targeted to minors or whose marketing is likely to promote use of such products by minors.

(c) INCLUSION IN TOBACCO REGULATION ACTIVITIES ANNUAL REPORT.—The Secretary shall include in each annual report required to be submitted pursuant to section 112 of subtitle B of title I of division P of the Consolidated Appropriations Act, 2022 (Public Law 117–103), the total number of compliance and enforcement actions taken with respect to disposable ENDS products during the year covered by the report.

(d) DISPOSABLE ENDS PRODUCT DEFINED.—In this Act, the term ''disposable ENDS product'' means a tobacco product (as defined by section 201(rr) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(rr))) that consists of a single unit including the battery and the liquid, and the entire device is intended to be disposed of after the liquid has been depleted.

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