

115TH CONGRESS  
2D SESSION

# S. 3319

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

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IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2018

Mr. DURBIN (for himself and Ms. MURKOWSKI) introduced the following bill;  
which was read twice and referred to the Committee on Health, Edu-  
cation, Labor, and Pensions

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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”.

1 **SEC. 2. ADDITIONAL RESTRICTIONS ON USE OF TOBACCO**  
2 **FLAVORS.**

3 (a) TOBACCO PRODUCT STANDARDS.—Section  
4 907(a)(1) of the Federal Food, Drug, and Cosmetic Act  
5 (21 U.S.C. 387g) is amended—

6 (1) by redesignating subparagraph (B) as sub-  
7 paragraph (C); and

8 (2) by inserting after subparagraph (A) the fol-  
9 lowing:

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

12 “(i) IN GENERAL.—Except as pro-  
13 vided in clause (ii), a tobacco product that  
14 is not a cigarette, or any component, part,  
15 or accessory of such a product, shall not  
16 contain, as a constituent (including a  
17 smoke or aerosol constituent) or additive,  
18 an artificial or natural flavor (other than  
19 tobacco) or an herb or spice (including  
20 menthol, strawberry, grape, orange, clove,  
21 cinnamon, pineapple, vanilla, coconut, lico-  
22 rice, cocoa, chocolate, cherry, and coffee)  
23 that is a characterizing flavor of the to-  
24 bacco product, tobacco smoke, or aerosol  
25 emitted from the product. Nothing in this  
26 subparagraph shall be construed to limit

1 the Secretary's authority to take action  
2 under this section or other provisions of  
3 this Act applicable to any artificial or nat-  
4 ural flavor, herb, or spice not specified in  
5 this subparagraph.

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

15 “(I) will increase the likelihood of  
16 smoking cessation among current  
17 users of tobacco products;

18 “(II) will not increase the likeli-  
19 hood of youth initiation of nicotine or  
20 tobacco products; and

21 “(III) will not increase the likeli-  
22 hood of harm to the person using the  
23 characterizing flavor.”.

24 (b) DEFINITIONS.—Section 900 of the Federal Food,  
25 Drug, and Cosmetic Act (21 U.S.C. 387) is amended—

1           (1) by redesignating paragraphs (8) through  
2           (22) as paragraphs (9) through (23); and

3           (2) by inserting after paragraph (7) the fol-  
4           lowing:

5           “(8) ELECTRONIC NICOTINE DELIVERY SYS-  
6           TEM.—The term ‘electronic nicotine delivery sys-  
7           tem’—

8                   “(A) means any electronic device that de-  
9                   livers nicotine, flavor, or another substance via  
10                  an aerosolized solution to the user inhaling  
11                  from the device (including e-cigarettes, e-hook-  
12                  ah, e-cigars, vape pens, advanced refillable per-  
13                  sonal vaporizers, and electronic pipes) and any  
14                  component, liquid, part, or accessory of such a  
15                  device, whether or not sold separately; and

16                  “(B) does not include a product that—

17                          “(i) is approved by the Food and  
18                          Drug Administration for sale as a tobacco  
19                          cessation product or for another thera-  
20                          peutic purpose; and

21                          “(ii) is marketed and sold solely for a  
22                          purpose described in (i).”.

23           (c) CONFORMING AMENDMENT.—Section 9(1) of the  
24           Comprehensive Smokeless Tobacco Health Education Act

1 of 1986 (15 U.S.C. 4408(1)) is amended by striking “sec-  
2 tion 900(18)” and inserting “section 900(19)”.

3 (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall take effect 1 year after the date of enact-  
5 ment of this Act.

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