

117TH CONGRESS
1ST SESSION

S. 438

To amend the Federal Food, Drug, and Cosmetic Act to clarify the Food and Drug Administration’s jurisdiction over certain tobacco products, and to protect jobs and small businesses involved in the sale, manufacturing and distribution of traditional and premium cigars.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2021

Mr. RUBIO (for himself, Mr. COTTON, Ms. ERNST, Mr. SCOTT of Florida, Mr. BARRASSO, Mr. INHOFE, Mr. GRAHAM, Mr. BOOZMAN, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Federal Food, Drug, and Cosmetic Act to clarify the Food and Drug Administration’s jurisdiction over certain tobacco products, and to protect jobs and small businesses involved in the sale, manufacturing and distribution of traditional and premium cigars.

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 “Traditional Cigar Man-
5 ufacturing and Small Business Jobs Preservation Act of
6 2021”.

1 **SEC. 2. LIMITATION OF AUTHORITY WITH RESPECT TO**
 2 **PREMIUM CIGARS.**

3 (a) EXCEPTION FOR TRADITIONAL LARGE AND PRE-
 4 MIUM CIGARS.—Section 901(c) of the Federal Food,
 5 Drug, and Cosmetic Act (21 U.S.C. 387a(c)) is amend-
 6 ed—

7 (1) in paragraph (2), in the heading, by insert-
 8 ing “FOR CERTAIN TOBACCO LEAF” after “AUTHOR-
 9 ITY”; and

10 (2) by adding at the end the following:

11 “(3) LIMITATION OF AUTHORITY FOR CERTAIN
 12 CIGARS.—

13 “(A) IN GENERAL.—The provisions of this
 14 chapter (except for section 907(d)(3)) shall not
 15 apply to traditional large and premium cigars.

16 “(B) RULE OF CONSTRUCTION.—Nothing
 17 in this chapter shall be construed to grant the
 18 Secretary authority to promulgate regulations
 19 on any matter that involves traditional large
 20 and premium cigars.

21 “(C) TRADITIONAL LARGE AND PREMIUM
 22 CIGAR DEFINED.—For purposes of this para-
 23 graph, the term ‘traditional large and premium
 24 cigar’—

25 “(i) means any roll of tobacco that is
 26 wrapped in 100-percent leaf tobacco,

1 bunched with 100-percent tobacco filler,
2 contains no filter, tip or non-tobacco
3 mouthpiece, weighs at least 6 pounds per
4 1,000 count, and—

5 “(I) has a 100-percent leaf to-
6 bacco binder and is hand rolled;

7 “(II) has a 100-percent leaf to-
8 bacco binder and is made using
9 human hands to lay the leaf tobacco
10 wrapper or binder onto only one ma-
11 chine that bunches, wraps, and caps
12 each individual cigar; or

13 “(III) has a homogenized tobacco
14 leaf binder and is made in the United
15 States using human hands to lay the
16 100-percent leaf tobacco wrapper onto
17 only one machine that bunches,
18 wraps, and caps each individual cigar;
19 and

20 “(ii) does not include a cigarette (as
21 such term is defined by section 900(3)) or
22 a little cigar (as such term is defined by
23 section 900(11)).”.

1 (b) CONFORMING AMENDMENTS.—Section 919(b) of
2 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
3 387s(b)) is amended—

4 (1) in paragraph (2)(B)(i)(II), by inserting “,
5 but excluding traditional large and premium cigars
6 (as such term is defined under section 901(c)(3))”
7 before the period; and

8 (2) in paragraph (5), by inserting “subject to
9 section 901(c)(3),” before “if a user fee”.

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