

116TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To protect the public health by prohibiting non-tobacco e-cigarette flavors  
and ensuring electronic nicotine delivery systems are tamper-proof.

---

IN THE SENATE OF THE UNITED STATES

---

Mr. ROMNEY (for himself and Mr. MERKLEY) introduced the following bill;  
which was read twice and referred to the Committee on

---

**A BILL**

To protect the public health by prohibiting non-tobacco e-  
cigarette flavors and ensuring electronic nicotine delivery  
systems are tamper-proof.

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 “Ending New Nicotine  
5       Dependencies Act of 2019” or the “ENND Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds as follows:

8               (1) As of September 11, 2019, the Centers for  
9       Disease Control and Prevention and the Food and

1 Drug Administration reported 380 confirmed and  
2 probable cases of severe pulmonary disease cases as-  
3 sociated with the widespread use of electronic ciga-  
4 rettes (referred to in this section as “e-cigarettes”).

5 (2) As of September 17, 2019, States have re-  
6 ported as many as 7 deaths nationwide associated  
7 with the use of e-cigarettes.

8 (3) The American Medical Association has stat-  
9 ed that e-cigarette-related lung illnesses “reaffirm[s]  
10 our belief that the use of e-cigarettes and vaping is  
11 an urgent public health epidemic that must be ad-  
12 dressed”.

13 (4) The Surgeon General has warned that the  
14 proliferation of e-cigarettes is “cause for great con-  
15 cern”, and that the use of e-cigarettes has “become  
16 an epidemic among our nation’s young people”.

17 (5) Since 2014, e-cigarettes have been the most  
18 commonly used tobacco product among youth in the  
19 United States.

20 (6) According to the Food and Drug Adminis-  
21 tration, “youth consistently report product flavorings  
22 as a leading reason for using tobacco products” and  
23 “flavors may disguise the taste of tobacco”.

1           (7) In 2019, more than 1 in every 4 high school  
2           students reported using e-cigarettes in the past 30  
3           days.

4           (8) On September 9, 2019, the Food and Drug  
5           Administration sent a warning letter to one of the  
6           largest e-cigarette companies for violating Federal  
7           regulations and utilizing illegal marketing tactics.

8           (9) E-cigarettes are not currently approved by  
9           the Food and Drug Administration as a smoking  
10          cessation aid.

11          (10) More research is needed to evaluate the  
12          safety of e-cigarettes, including the risks associated  
13          with tampering with and altering e-cigarettes and  
14          the health implications of heating aerosolized to-  
15          bacco products.

16 **SEC. 3. RESTRICTIONS ON FLAVORS IN TOBACCO PROD-**  
17 **UCTS AND ON DEVICE DESIGN.**

18          (a) IN GENERAL.—Section 907(a) of the Federal  
19 Food, Drug, and Cosmetic Act (21 U.S.C. 387g(a)) is  
20 amended—

21               (1) in paragraph (1), by adding at the end the  
22               following:

23                       “(C) SPECIAL RULE FOR ELECTRONIC NIC-  
24                       OTINE DELIVERY SYSTEMS.—Beginning 90  
25                       days after the date of enactment of the ENND

1 Act, an electronic nicotine delivery system or  
2 any of its components or parts (including e-liq-  
3 uid) shall not contain, as a constituent (includ-  
4 ing a smoke constituent) or additive, an artifi-  
5 cial or natural flavor (other than tobacco) or an  
6 herb or spice, including strawberry, grape, or-  
7 ange, clove, cinnamon, pineapple, vanilla, coco-  
8 nut, licorice, cocoa, chocolate, cherry, coffee,  
9 menthol, or mint that is a characterizing flavor  
10 of the electronic nicotine delivery system or e-  
11 liquid. Nothing in this subparagraph shall be  
12 construed to limit the Secretary's authority to  
13 take action under this section or other sections  
14 of this Act applicable to any artificial or natural  
15 flavor, herb, or spice not specified in this sub-  
16 paragraph.”; and

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

18 “(7) ELECTRONIC NICOTINE DELIVERY SYSTEM  
19 STANDARDS.—Not later than 1 year after the date  
20 of enactment of the ENND Act, the Secretary shall  
21 promulgate regulations setting forth standards on  
22 the permissible design of electronic nicotine delivery  
23 systems, and issue guidance for manufacturers to  
24 implement such standards. Such standards, at a  
25 minimum, shall—

1           “(A) prohibit refillable components or  
2 parts;

3           “(B) prohibit any electronic nicotine deliv-  
4 ery system designed to look like combustible  
5 cigarettes or commonplace, nonmedical devices,  
6 such as pens or USB flash drives; and

7           “(C) require each electronic nicotine deliv-  
8 ery system and its components and parts to be  
9 tamper-proof.”.

10 (b) DEFINITIONS.—

11           (1) IN GENERAL.—Section 900 of the Federal  
12 Food, Drug, and Cosmetic Act (21 U.S.C. 387) is  
13 amended—

14           (A) by redesignating paragraphs (8)  
15 through (22) as paragraphs (10) through (24);  
16 and

17           (B) by inserting after paragraph (7) the  
18 following:

19           “(8) ELECTRONIC NICOTINE DELIVERY SYS-  
20 TEM.—

21           “(A) IN GENERAL.—The term ‘electronic  
22 nicotine delivery system’—

23           “(i) means noncombustible tobacco  
24 products, including vapes, vaporizers, vape  
25 pens, hookah pens, electronic cigarettes

1 (also known as ‘e-cigarettes’ or ‘e-cigs’),  
2 and e-pipes that deliver an aerosolized e-  
3 liquid that may contain nicotine, as well as  
4 varying compositions of flavorings, pro-  
5 pylene glycol, vegetable glycerin, and other  
6 ingredients; and

7 “(ii) includes components and parts,  
8 such as e-liquids, tanks, cartridges, pods,  
9 wicks, and atomizers.

10 “(B) COMPONENTS AND PARTS.—The  
11 term ‘components and parts’, with respect to an  
12 electronic nicotine delivery system, means the  
13 objects intended or reasonably expected to be  
14 used with, or for, the human consumption of a  
15 tobacco product that are not accessories.

16 “(9) E-LIQUID.—The term ‘e-liquid’ means liq-  
17 uid nicotine, nicotine containing liquids (including  
18 liquid nicotine combined with colorings, flavorings,  
19 or other ingredients), and liquids that do not contain  
20 nicotine or other material made or derived from to-  
21 bacco, but that are intended or reasonably expected  
22 to be used with or for the human consumption of a  
23 tobacco product.”.

24 (2) CONFORMING AMENDMENT.—Section 9(1)  
25 of the Comprehensive Smokeless Tobacco Health

1 Education Act of 1986 (15 U.S.C. 4408(1)) is  
2 amended by striking “section 900(18)” and insert-  
3 ing “section 900(20)”.

4 **SEC. 4. MONITORING OF PUBLIC HEALTH RISKS OF TO-**  
5 **BACCO USE.**

6 Not later than 1 year after the date of enactment  
7 of this Act and annually thereafter, the Secretary of  
8 Health and Human Services, in consultation with the Di-  
9 rector of the National Institutes of Health, the Commis-  
10 sioner of Food and Drugs, the Director of the Centers for  
11 Disease Control and Prevention, and other heads of appro-  
12 priate agencies, as the Secretary of Health and Human  
13 Services determines appropriate, shall submit to the Com-  
14 mittee on Health, Education, Labor, and Pensions and the  
15 Committee on Appropriations of the Senate and the Com-  
16 mittee on Energy and Commerce and the Committee on  
17 Appropriations of the House of Representatives, and pub-  
18 licly post on an internet website, a report on the public  
19 health risks of tobacco use that includes—

20 (1) the public health implications of the use of  
21 tobacco products, with a focus on electronic nicotine  
22 delivery systems and other alternative tobacco prod-  
23 ucts;

24 (2) emerging trends in tobacco use, including  
25 the use of tobacco flavors and new tobacco products;

- 1           (3) updates on the public health awareness  
2       campaign authorized by section 6; and  
3           (4) recommendations for Congress.

4   **SEC. 5. APPLICATION OF TOBACCO EXCISE TAX TO ELEC-**  
5                   **TRONIC NICOTINE DELIVERY SYSTEMS.**

6       (a) IMPOSITION, RATE, AND ATTACHMENT OF  
7   TAX.—Section 5701 of the Internal Revenue Code of 1986  
8   is amended—

9           (1) by redesignating subsection (h) as sub-  
10       section (i), and

11          (2) by inserting after subsection (g) the fol-  
12       lowing new subsection:

13       “(h) ELECTRONIC NICOTINE DELIVERY.—

14           “(1) ELECTRONIC NICOTINE DELIVERY SYS-  
15       TEMS.—

16           “(A) IN GENERAL.—On electronic nicotine  
17       delivery systems (as defined in section 900(8)  
18       of the Federal Food, Drug, and Cosmetic Act  
19       (21 U.S.C. 387(8))), manufactured in or im-  
20       ported into the United States, there shall be  
21       imposed a tax equal to \$1.01 per electronic nic-  
22       otine delivery system.

23           “(B) EXCEPTION.—This paragraph shall  
24       not apply to any single-use electronic nicotine  
25       delivery system.

1           “(2) E-LIQUID.—On e-liquids (as defined in  
2           section 900(9) of such Act) or single-use electronic  
3           nicotine delivery systems, manufactured in or im-  
4           ported into the United States, there shall be imposed  
5           a tax equal to—

6                   “(A) in the case of a product which con-  
7                   tains less than 5 percent nicotine by volume,  
8                   \$1.01, and

9                   “(B) in the case of the product which con-  
10                  tains a percentage of nicotine by volume which  
11                  is equal to or greater than 5 percent, an  
12                  amount equal to the sum of—

13                           “(i) \$1.01, plus,

14                           “(ii) for each percentage point of nico-  
15                          tine by volume contained in such product  
16                          which is in excess of 5 percent, 20.2 cents  
17                          (and a proportionate amount at the like  
18                          rate on any such percentage which is not  
19                          a whole number).”.

20           (b) DEFINITIONS.—Section 5702 of the Internal Rev-  
21           enue Code of 1986 is amended—

22                   (1) in subsection (c), by striking “and roll-your-  
23                   own tobacco” and inserting “roll-your-own tobacco,  
24                   electronic nicotine delivery systems, and e-liquids”,  
25                   and

1           (2) in subsection (d), by striking “or roll-your-  
2           own tobacco” each place it appears and inserting  
3           “roll-your-own tobacco, electronic nicotine delivery  
4           systems, and e-liquids”.

5           (c) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply to articles removed after the date  
7 which is 90 days after the date of enactment of this Act.

8 **SEC. 6. PUBLIC AWARENESS CAMPAIGN.**

9           (a) IN GENERAL.—The Secretary of Health and  
10 Human Services (referred to in this section as the “Sec-  
11 retary”) shall conduct a public awareness campaign to  
12 educate the public about the public health implications of  
13 using electronic nicotine delivery systems (as defined in  
14 section 900 of the Federal Food, Drug, and Cosmetic Act  
15 (21 U.S.C. 387), as amended by section 3).

16           (b) FUNDING.—To carry out subsection (a), for each  
17 of fiscal years 2021 through 2024, there shall be trans-  
18 ferred to the Secretary, from the General Fund of the  
19 Treasury, the lesser of—

20           (1) the amount equal to the amount collected  
21           under 5701(h) of the Internal Revenue Code of  
22           1986 during the previous fiscal year; or

23           (2) \$115,000,000.

24 **SEC. 7. IMPLEMENTATION OF EXCISE TAX.**

25           (a) TRANSITIONAL RULE.—Any person who—

1           (1) on the date of the enactment of this Act, is  
2           engaged in business as a manufacturer of electronic  
3           nicotine delivery systems or e-liquids, and

4           (2) before the applicable date, submits an appli-  
5           cation under subchapter B of chapter 52 of the In-  
6           ternal Revenue Code of 1986 to engage in such busi-  
7           ness,

8           may, notwithstanding such subchapter B, continue to en-  
9           gage in such business pending final action on such applica-  
10          tion. Pending such final action, all provisions of chapter  
11          52 of such Code shall apply to such applicant in the same  
12          manner and to the same extent as if such applicant were  
13          a holder of a permit to manufacture electronic nicotine  
14          delivery systems or e-liquids under such chapter 52.

15          (b) FLOOR STOCKS TAXES.—

16               (1) IMPOSITION OF TAX.—On electronic nico-  
17               tine delivery systems or e-liquids manufactured in or  
18               imported into the United States which are removed  
19               before the applicable date and held on such date for  
20               sale by any person, there is hereby imposed a tax in  
21               an amount equal to the tax which would be imposed  
22               under section 5701 of the Internal Revenue Code of  
23               1986 on the article if the article had been removed  
24               on such applicable date.

1           (2) LIABILITY FOR TAX AND METHOD OF PAY-  
2           MENT.—

3           (A) LIABILITY FOR TAX.—A person hold-  
4           ing electronic nicotine delivery systems or e-liq-  
5           uids on the applicable date to which any tax im-  
6           posed by paragraph (1) applies shall be liable  
7           for such tax.

8           (B) METHOD OF PAYMENT.—The tax im-  
9           posed by paragraph (1) shall be paid in such  
10          manner as the Secretary shall prescribe by reg-  
11          ulations.

12          (C) TIME FOR PAYMENT.—The tax im-  
13          posed by paragraph (1) shall be paid on or be-  
14          fore the date that is 120 days after the applica-  
15          ble date.

16          (3) ARTICLES IN FOREIGN TRADE ZONES.—  
17          Notwithstanding the Act of June 18, 1934 (com-  
18          monly known as the Foreign Trade Zone Act, 48  
19          Stat. 998, 19 U.S.C. 81a et seq.), or any other pro-  
20          vision of law, any article which is located in a for-  
21          eign trade zone on any tax increase date shall be  
22          subject to the tax imposed by paragraph (1) if—

23                (A) internal revenue taxes have been deter-  
24                mined, or customs duties liquidated, with re-  
25                spect to such article before such date pursuant

1 to a request made under the 1st proviso of sec-  
2 tion 3(a) of such Act, or

3 (B) such article is held on such date under  
4 the supervision of an officer of the United  
5 States Customs and Border Protection of the  
6 Department of Homeland Security pursuant to  
7 the 2d proviso of such section 3(a).

8 (4) CONTROLLED GROUPS.—Rules similar to  
9 the rules of section 5061(e)(3) of the Internal Rev-  
10 enue Code of 1986 shall apply for purposes of this  
11 subsection.

12 (5) OTHER LAWS APPLICABLE.—All provisions  
13 of law, including penalties, applicable with respect to  
14 the taxes imposed by section 5701 of the Internal  
15 Revenue Code of 1986 shall, insofar as applicable  
16 and not inconsistent with the provisions of this sub-  
17 section, apply to the floor stocks taxes imposed by  
18 paragraph (1), to the same extent as if such taxes  
19 were imposed by such section 5701. The Secretary  
20 may treat any person who bore the ultimate burden  
21 of the tax imposed by paragraph (1) as the person  
22 to whom a credit or refund under such provisions  
23 may be allowed or made.

24 (c) DEFINITIONS.—For purposes of this section—

1           (1) IN GENERAL.—Any term used in this sec-  
2           tion which is also used in section 5701 or 5702 of  
3           the Internal Revenue Code of 1986 shall have the  
4           same meaning as such term has in such section.

5           (2) APPLICABLE DATE.—The term “applicable  
6           date” means the day after the date which is 90 days  
7           after the date of enactment of this Act.

8           (3) SECRETARY.—The term “Secretary” means  
9           the Secretary of the Treasury or the Secretary’s del-  
10          egate.