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116TH CONGRESS
1ST SESSION

H. R. 5482

To amend the Public Health Service Act to authorize the Director of the Centers for Disease Control and Prevention to develop a program to prevent the use of electronic nicotine delivery systems among students in middle and high schools, to award grants to State and local health agencies to implement such program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 2019

Mr. KRISHNAMOORTHI (for himself, Mr. KING of New York, and Ms. DELAURO) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend the Public Health Service Act to authorize the Director of the Centers for Disease Control and Prevention to develop a program to prevent the use of electronic nicotine delivery systems among students in middle and high schools, to award grants to State and local health agencies to implement such program, and for other purposes.

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 ''Providing Resources to End the Vaping Epidemic Now for Teenagers Act of 2020'' or the ''PREVENT Act of 2020''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) High school e-cigarette use increased by 135 percent between 2017 and 2019.

(2) Middle school e-cigarette use increased by approximately 218 percent between 2017 and 2019.

(3) Results from the National Youth Tobacco Survey of the Centers for Disease Control and Prevention (in this section referred to as ''CDC'') and the Food and Drug Administration (in this section referred to as ''FDA'') published in December 2019 show that 27.5 percent of high school students and 10.5 percent of middle school students reported using an e-cigarette in the previous 30 days, up from 20.8 percent and 4.9 percent, respectively, in 2018.

(4) In 2019, more than one-third (34.2 percent) of high school e-cigarette users reported using e-cigarettes products frequently, on 20 to 30 days in the past month.

(5) The CDC, the FDA, the Department of Health and Human Services, the Surgeon General,

and various State and local health authorities have determined the skyrocketing e-cigarette use amongst American youth to be an ''epidemic''.

(6) According to the CDC, the use of nicotine among adolescents can be detrimental to memory making, learning, and behavior, and e-cigarette use has been linked to lung conditions and mysterious illness.

(7) According to data from the FDA's Population Assessment of Tobacco and Health Study, youth e-cigarette use is associated with more than four times the odds of trying cigarettes and nearly three times the odds of current cigarette use.

(8) The CDC and FDA continue to reiterate that the use of any tobacco product, including e-cigarettes, is unsafe for young people.

SEC. 3. GRANT PROGRAM TO PREVENT THE USE OF ELECTRONIC NICOTINE DELIVERY SYSTEMS IN MIDDLE AND HIGH SCHOOLS.

Title III of the Public Health Service Act is amended by inserting after section 317T of such Act (42 U.S.C. 247b–22) the following:

"SEC. 317U. GRANT PROGRAM TO PREVENT THE USE OF ELECTRONIC NICOTINE DELIVERY SYSTEMS IN MIDDLE AND HIGH SCHOOLS.

''(a) ESTABLISHMENT.—The Secretary, acting through the Director, in coordination with the Commissioner of Food and Drugs, shall—

''(1) develop a program to prevent the use of electronic nicotine delivery systems among students in middle and high schools; and

''(2) award grants to eligible entities to implement such program in the geographic area served by such agencies and organizations.

''(b) ELIGIBLE ENTITIES.—To seek a grant under this section, an entity shall be—

''(1) a State or local health agency;

''(2) a nonprofit organization; or

''(3) if the grant is to serve students in a rural area, a partnership of—

''(A) an entity described in paragraph (1) or (2); and

''(B) a local educational agency or a hospital.

''(c) PROGRAM REQUIREMENTS.—The program developed under subsection (a)(1) to prevent the use of electronic nicotine delivery systems among students in middle and high schools shall address each of the following:

''(1) Training for school personnel to identify and prevent the use by youth of electronic nicotine delivery systems.

''(2) Creating and distributing educational resources for preventing the use of electronic nicotine delivery systems, designed for students, parents, and school personnel.

''(3) Social media and marketing campaigns to educate students on the health risks of the use of electronic nicotine delivery systems and nicotine addiction, to be designed by the Centers for Disease Control and Prevention and implemented by grantees in partnership with private advertising companies, nonprofit organizations, and advocacy organizations that specialize in youth substance use prevention and addiction treatment.

''(4) Resources for students on how to communicate with their peers on the dangers of e-cigarette use.

''(5) Partnering with school counseling personnel to assist students impacted by youth vaping.

''(6) Offering public health resources and counseling to help treat youth nicotine addiction and recovery.

''(d) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to eligible entities proposing to serve underserved populations with the greatest use of vaping products.

''(e) APPLICATION.—To seek a grant under subsection (a)(2), an eligible entity shall submit an application at such time, in such manner, and containing such information as the Director may require.

''(f) GEOGRAPHIC DISTRIBUTION.—In awarding grants under this section, the Secretary shall ensure that such grants are distributed equitably across urban and rural areas.

''(g) CONSULTATION.—As a condition on receipt of a grant under subsection (a)(2), an eligible entity shall agree that, in carrying out its program funded through the grant, the agency will consult with the following:

''(1) Public health, health care, and youth vaping prevention advocacy organizations, and organizations representing educators.

''(2) Organizations that specialize in addiction prevention and treatment.

''(3) Mental health and medical specialists, including professionals who specialize in child development.

''(4) School principals and other school administrators.

''(h) REPORTING.—

''(1) BY GRANTEES.—As a condition on the receipt of a grant under subsection (a)(2), an eligible entity shall agree to submit to the Director a report annually over the grant period. Each such report shall address the following:

''(A) The greatest obstacles in implementing the program developed under subsection (a)(1).

''(B) The greatest obstacles in preventing the use by youth of electronic nicotine delivery systems.

''(C) Additional resources are needed to address the popularity of electronic delivery systems and youth vaping culture.

''(2) REPORTING BY CDC.—Not later than 2 years after the program is developed pursuant to subsection (a)(1), and annually thereafter, the Director shall submit to Congress a report on the following:

''(A) How the funds made available for carrying out this section were used in developing a program under subsection (a)(1) and

implementing such program through grants under subsection (a)(2).

''(B) Which strategies or resources were effective in preventing the use by youth of electronic nicotine delivery systems.

''(C) Which strategies or resources were not effective in preventing the use by youth of electronic nicotine delivery systems.

''(3) POSTING OF REPORTS AND COMPILED FINDINGS.—The Director shall—

''(A) not later than 60 days after receiving a report submitted by a grantee pursuant to paragraph (1), summarize the key findings of such report and post such summary on the public internet website of the Centers for Disease Control and Prevention; and

''(B) not later than 60 days after submitting a report to Congress under paragraph (2), summarize the key findings of the report and post such summary on such public internet website.

''(i) DEFINITIONS.—In this section:

''(1) The term 'Director' means the Director of the Centers for Disease Prevention and Control.

''(2) The term 'electronic nicotine delivery system' has the meaning given to such term in section 919A of the Federal Food, Drug, and Cosmetic Act.

''(j) FUNDING.—Out of amounts collected as fees under section 919A of the Federal Food, Drug, and Cosmetic Act, there are authorized to be appropriated to carry out this section the following:

''(1) For fiscal year 2021, $200,000,000.

''(2) For each of fiscal years 2022 and 2023, the amount described in paragraph (1), adjusted by the percentage change in the Consumer Price Index for all urban consumers (all items; United States city average) between 2021 and the applicable year.''.

SEC. 4. USER FEES RELATING TO ELECTRONIC NICOTINE DELIVERY SYSTEMS.

(a) IN GENERAL.—Chapter IX of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387 et seq.) is amended by inserting after section 919 the following:

''SEC. 919A. USER FEES RELATING TO ELECTRONIC NICOTINE DELIVERY SYSTEMS.

''(a) ESTABLISHMENT OF QUARTERLY FEE.—Beginning with fiscal year 2021, the Secretary, acting through the Commissioner of Food and Drugs, shall assess user fees on, and collect such fees from, each manufacturer and

importer of electronic nicotine delivery systems. The fees shall be assessed and collected with respect to each quarter of each fiscal year, and the total amount assessed and collected for a fiscal year shall be the amount specified in subsection (b)(1) for such year, subject to subsection (c).

"(b) ASSESSMENT OF USER FEE.—

"(1) AMOUNT OF ASSESSMENT.—The total amount of user fees authorized to be assessed and collected under subsection (a) for a fiscal year is the following, as applicable to the fiscal year involved:

"(A) For fiscal year 2021, $200,000,000.

"(B) For fiscal year 2022 and fiscal year 2023, the amount described in subparagraph (A), adjusted by the percentage change in the Consumer Price Index for all urban consumers (all items; United States city average) between 2021 and the applicable year.

"(2) DETERMINATION OF USER FEE BY COMPANY.—The total user fee to be paid by each manufacturer or importer of electronic nicotine delivery systems shall be determined for each quarter pursuant to a formula developed by the Secretary.

"(3) TIMING OF ASSESSMENT.—The Secretary shall notify each manufacturer and importer of electronic nicotine delivery systems subject to this sec-

tion of the amount of the quarterly assessment imposed on such manufacturer or importer under this subsection for each quarter of each fiscal year. Such notifications shall occur not later than 30 days prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made by the last day of the quarter involved.

''(4) CALCULATION OF MARKET SHARE.—Beginning not later than fiscal year 2020, and for each subsequent fiscal year, the Secretary shall ensure that the Food and Drug Administration is able to determine—

''(A) the annual amount of total sales in the electronic nicotine delivery system market of the United States; and

''(B) the applicable percentage shares under paragraph (2).

''(c) CREDITING AND AVAILABILITY OF FEES.—

''(1) IN GENERAL.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the 'Food and Drug Administration—Salaries and

Expenses' account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation.

''(2) AVAILABILITY.—Fees appropriated under paragraph (3) shall be—

''(A) transferred to the Centers for Disease Control and Prevention; and

''(B) available only for the purpose of paying the costs of carrying out section 317U of the Public Health Service Act.

''(3) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2021 and each subsequent fiscal year, there is authorized to be appropriated for fees under this section an amount equal to the amount specified in subsection (b)(1) for the fiscal year.

''(d) APPLICABILITY TO FISCAL YEAR 2020.—If the date of enactment of the Providing Resources to End the Vaping Epidemic Now for Teenagers Act of 2020 occurs during fiscal year 2021, the following applies:

''(1) The Secretary shall determine the fees that would apply for a single quarter of such fiscal year according to the application of subsection (b) to the amount specified in paragraph (1)(A) of such subsection (referred to in this subsection as the 'quarterly fee amount').

''(2) For the quarter in which such date of enactment occurs and any preceding quarter of fiscal year 2021, fees shall not be assessed or collected under this section.

''(3) The amount specified in subsection (b)(1)(A) is deemed to be reduced by the quarterly amount for each quarter for which fees are not assessed or collected by operation of paragraph (3).

''(4) For any quarter in fiscal year 2021 following the quarter in which the date of enactment of the Providing Resources to End the Vaping Epidemic Now for Teenagers Act of 2020 occurs, the full quarterly fee amount shall be assessed and collected.''.

(b) ENFORCEMENT.—

(1) IN GENERAL.—Section 902(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387b(4)) is amended by inserting '', or the manufacturer or importer of electronic nicotine delivery systems fails to pay a user fee assessed to such manufacturer or importer pursuant to section 919A by the date specified in section 919A or by the 30th day after final agency action on a resolution of any dispute as to the amount of such fee'' before the semicolon.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the later of October 1, 2021, or the date of enactment of this Act.

(c) DEFINITION.—Section 900 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387) is amended—

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

(2) by inserting after paragraph (7) the following:

''(8) ELECTRONIC NICOTINE DELIVERY SYSTEM.—The term 'electronic nicotine delivery system'—

''(A) means a tobacco product that is an electronic device that delivers nicotine, flavor, or another substance via an aerosolized solution to the user inhaling from the device (including e-cigarettes, e-hookah, e-cigars, vape pens, advanced refillable personal vaporizers, and electronic pipes) and any component, liquid, part, or accessory of such a device, whether or not sold separately; and

''(B) does not include a product that is approved by the Food and Drug Administration

for sale as a tobacco cessation product or for another therapeutic purpose.''.

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