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(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

**H. R.**

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

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IN THE HOUSE OF REPRESENTATIVES

Mrs. CHERFILUS-McCORMICK introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

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

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 “Disposable ENDS  
5 Product Enforcement Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) In April 2020, the Food and Drug Adminis-  
2           tration issued guidance entitled “Enforcement Prior-  
3           ities for Electronic Nicotine Delivery System  
4           (ENDS) and Other Deemed Products on the Market  
5           Without Premarket Authorization”.

6           (2) In such guidance, Food and Drug Adminis-  
7           tration describes how the agency intends to prioritize  
8           enforcement against any flavored, cartridge-based  
9           electronic nicotine delivery system product (other  
10          than a tobacco- or menthol-flavored electronic nico-  
11          tine delivery system product) marketed without au-  
12          thorization from the Food and Drug Administration.

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

17          (4) The guidance explains: “FDA is continu-  
18          ously evaluating new information and adjusting its  
19          enforcement priorities in light of the best available  
20          data, and it will continue to do so with respect to  
21          these products. FDA will take appropriate action re-  
22          garding tobacco products that are marketed without  
23          premarket authorization, including as warranted  
24          based on changed circumstances, new information,  
25          or to better address minors’ use of those products”.

1           (5) In November 2022, the Food and Drug Ad-  
2           ministration and the Centers for Disease Control  
3           and Prevention released the findings from the 2022  
4           National Youth Tobacco Survey. The data shows  
5           that self-contained disposable electronic nicotine de-  
6           livery system products were the most common device  
7           type used by minors.

8   **SEC. 3. UPDATED ENFORCEMENT PRIORITIZATION.**

9           (a) **GUIDANCE.**—The Secretary of Health and  
10          Human Services, acting through the Commissioner of  
11          Food and Drugs (referred to in this Act as the “Sec-  
12          retary”), shall not later than 90 days after the date of  
13          the enactment of this Act, update the final guidance enti-  
14          tled “Enforcement Priorities for Electronic Nicotine De-  
15          livery System (ENDS) and Other Deemed Products on the  
16          Market Without Premarket Authorization” issued in April  
17          2020, to include a description of how the Secretary will  
18          also prioritize enforcement against disposable ENDS  
19          products, including such nicotine products not derived  
20          from tobacco.

21          (b) **ENFORCEMENT.**—Nothing in this section shall be  
22          construed as preventing the Secretary from prioritizing  
23          enforcement against disposable ENDS products, including  
24          nicotine products not derived from tobacco, in advance of  
25          updating the guidance referred to in paragraph (1), par-

1 ticularly with respect to such products that are targeted  
2 to minors or whose marketing is likely to promote use of  
3 such products by minors.

4 (c) INCLUSION IN TOBACCO REGULATION ACTIVITIES  
5 ANNUAL REPORT.—The Secretary shall include in each  
6 annual report required to be submitted pursuant to section  
7 112 of subtitle B of title I of division P of the Consolidated  
8 Appropriations Act, 2022 (Public Law 117–103), the total  
9 number of compliance and enforcement actions taken with  
10 respect to disposable ENDS products during the year cov-  
11 ered by the report.

12 (d) DISPOSABLE ENDS PRODUCT DEFINED.—In  
13 this Act, the term “disposable ENDS product” means a  
14 tobacco product (as defined by section 201(rr) of the Fed-  
15 eral Food, Drug, and Cosmetic Act (21 U.S.C. 321(rr)))  
16 that consists of a single unit including the battery and  
17 the liquid, and the entire device is intended to be disposed  
18 of after the liquid has been depleted.