

118TH CONGRESS
2D SESSION

H. R. 10444

To clarify that States do not have authority to establish or continue in effect any requirement with respect to the sale, distribution, possession, or use of less harmful alternatives to traditional tobacco products to protect public health, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 17, 2024

Mr. BERGMAN (for himself and Mr. DAVIS of North Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To clarify that States do not have authority to establish or continue in effect any requirement with respect to the sale, distribution, possession, or use of less harmful alternatives to traditional tobacco products to protect public health, and for other purposes.

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 “Public Options for Un-
5 restricted Consumer Harm-reduction Act of 2024” or the
6 “POUCH Act of 2024”.

1 **SEC. 2. PREEMPTION OF STATE LAWS ON TOBACCO PROD-**
2 **UCTS FOR WHICH A MARKETING ORDER IS IN**
3 **EFFECT.**

4 (a) IN GENERAL.—Paragraph (2) of section 916(a)
5 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
6 387p(a)) is amended to read as follows:

7 “(2) PREEMPTION OF CERTAIN STATE AND
8 LOCAL REQUIREMENTS.—

9 “(A) IN GENERAL.—

10 “(i) PREEMPTION.—No State or polit-
11 ical subdivision of a State may establish or
12 continue in effect with respect to a tobacco
13 product any requirement which is different
14 from, or in addition to, any requirement
15 under the provisions of this chapter relat-
16 ing to tobacco product standards, pre-
17 market review, adulteration, misbranding,
18 labeling, registration, good manufacturing
19 standards, or modified risk tobacco prod-
20 ucts.

21 “(ii) EXCEPTION.—Clause (i) does not
22 apply to requirements relating to the sale
23 of, distribution of, possession of, informa-
24 tion reporting to the State, exposure to,
25 access to, the advertising and promotion
26 of, or use of, tobacco products to or by in-

dividuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under clause (i) that is exempt from disclosure under section 552(b)(4) of title 5, United States Code, shall be treated as a trade secret and confidential information by the State.

“(B) TOBACCO PRODUCTS FOR WHICH A MARKETING ORDER IS IN EFFECT.—No State or political subdivision of a State may establish or continue in effect, with respect to tobacco products for which there is a marketing order issued under section 910(c)(1)(A)(i) in effect, any prohibition or restriction on the sale of, distribution of, possession of, exposure to, access to, advertising and promotion of, or use of such tobacco products that is different from, or in addition to, any prohibition or restriction on such tobacco products under the provisions of this chapter.”.

(b) CONFORMING CHANGES.—Section 916(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387p(a)(2)(A)) is amended by striking “the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals”

1 and inserting “the sale of, distribution of, possession of,
2 exposure to, access to, advertising and promotion of, or
3 use of tobacco products to or by individuals”.

4 **SEC. 3. REPORT ON PENDING TOBACCO PRODUCT APPLI-**
5 **CATIONS.**

6 Not later than the date that is 90 days after the date
7 of enactment of this Act, the Commissioner of Food and
8 Drugs shall submit to Congress a report containing a list
9 specifying—

10 (1) each pending new tobacco product applica-
11 tion under section 910 of the Federal Food, Drug,
12 and Cosmetic Act (21 U.S.C. 387j);

13 (2) each pending application for a marketing
14 authorization order for a modified risk tobacco prod-
15 uct under section 911 of such Act (21 U.S.C. 387k);
16 and

17 (3) the status of each pending application re-
18 ferred to in paragraph (1) or (2).

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