

107th CONGRESS
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H. R. 4607

To provide for fire safety standards for cigarettes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2002

Mr. MARKEY (for himself, Mr. HANSEN, Mr. OLVER, Mr. NEAL of Massachusetts, Mr. MCGOVERN, Mr. FRANK, Mr. MEEHAN, Mr. TIERNEY, Mr. CAPUANO, Mr. LYNCH, and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To provide for fire safety standards for cigarettes, 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 'Joseph Moakley Memorial Fire Safe Cigarette Act of 2002'.

SEC. 2. FINDINGS.

Congress makes the following findings:

- (1) Cigarette ignited fires are the leading cause of fire deaths in the United States.
- (2) In 1998 there were 903 deaths from cigarette ignited fires, 2,453 civilian injuries from such fires, and \$411,700,000 in property damage caused by such fires.
- (3) Nearly 100 children are killed each year from cigarette related fires.
- (4) The results accomplished under the Cigarette Safety Act of 1984 and the Fire Safe Cigarette Act of 1990 complete the necessary technical work for a cigarette fire safety standard.
- (5) It is appropriate for Congress to require by law the establishment of a cigarette fire safety standard for the manufacture and importation of cigarettes.
- (6) A recent study by the Consumer Product Safety Commission found that the cost of the loss of human life and personal property from not having a cigarette fire safety standard is \$4,600,000,000 a year.

(7) It is appropriate that the regulatory expertise of the Consumer Product Safety Commission be used to implement a cigarette fire safety standard.

SEC. 3. CIGARETTE FIRE SAFETY STANDARD.

(a) IN GENERAL-

(1) REQUIREMENT FOR STANDARD- Not later than 18 months after the date of the enactment of this Act, the Commission shall, by rule, prescribe one or more fire safety standards for cigarettes to reduce the risk of ignition presented by cigarettes.

(2) GENERAL TEST REQUIREMENTS-

(A) TESTING METHODOLOGY- Except as provided in paragraph (3), in establishing standards under paragraph (1), the Commission shall use the testing methodology for determining the ignition propensity of cigarettes referred to in 'Relative Ignition Propensity of Test Market Cigarettes--National Institute of Standards and Technology--NIST Technical Note 1436, January, 2001--Appendix D: Cigarette Extinction Method', together with any requirements specified in this paragraph.

(B) ADDITIONAL REQUIREMENT- Testing shall be conducted on 10 layers of filter paper, as described in the testing methodology referred to in subparagraph (A).

(C) COMPLETE TEST TRIAL- Forty replicate tests shall be required to comprise a complete test trial for each cigarette tested. Test results and the application of an acceptance criterion shall be derived only for complete test trials comprised of 40 replicate tests.

(D) TEST FAILURE- A test failure shall consist of more than 25 percent of the cigarettes tested in a test trial failing to self-extinguish before burning the full length of the tobacco column.

(3) CIGARETTES WITH UNIQUE CHARACTERISTICS- In establishing standards under paragraph (1) with respect to a cigarette that cannot be tested using the testing methodology referred to in paragraph (2) because of unique or nontraditional characteristics, the Commission shall accept a testing methodology and acceptance criterion that are proposed by the manufacturer or manufacturers of the cigarette if the Commission, after review of the application of the proposed testing methodology and acceptance criterion, determines that the cigarette has an ignition propensity equivalent to or less than cigarettes that pass the acceptance criterion referred to in paragraph (2).

(4) CIGARETTE PAPER- In addition to establishing standards under paragraph (1), the Commission may also regulate the ignition propensity of cigarette paper for roll-your-own tobacco products.

(5) EXERCISE OF AUTHORITY- If the Commission does not prescribe the standard required by paragraph (1) within the time specified in that paragraph, paragraph (1) shall continue to apply, and the provisions of paragraph (2) shall be in effect as a consumer product safety standard

under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) until the Commission prescribes the standard under paragraph (1).

(b) STOCKPILING-

(1) **IN GENERAL-** The Commission shall include in the rule prescribed under subsection (a) a prohibition on the stockpiling of cigarettes to which the fire safety standards in the rule will apply.

(2) **STOCKPILING DEFINED-** In this subsection, the term 'stockpiling', in the case of a cigarette to which a standard under subsection (a) will apply, means the manufacturing or importing of the cigarette, between the date the standard is issued and the date the standard takes effect, at a rate greater than the rate the cigarette was manufactured or imported during the one-year period ending on the date the standard is issued.

(c) PROCEDURE-

(1) **IN GENERAL-** The rule under subsection (a), and any modification thereof, shall be prescribed in accordance with the provisions of section 553 of title 5, United States Code.

(2) MODIFICATIONS-

(A) **MODIFICATION BY SPONSOR-** If the sponsor of the testing methodology under subsection (a)(2) modifies the testing methodology in any material respect, the sponsor shall notify the Commission of the modification, and the Commission may incorporate the modification in the rule prescribed under subsection (a) if the Commission determines that the modification will enhance a fire safety standard established under subsection (a)(2).

(B) **MODIFICATION BY COMMISSION-** The Commission may modify the rule prescribed under subsection (a), including the test requirements specified in subsection (a)(2), in whole or in part, if the Commission determines that compliance with such modification is technically feasible and will enhance a fire safety standard established under that subsection. Any such modification shall not take effect earlier than 3 years after the date on which the rule is first issued.

(3) **INAPPLICABILITY OF CERTAIN LAWS-** No Federal law, or any Executive order, other than the rulemaking and review provisions of title 5, United States Code, that are commonly referred to as the Administrative Procedures Act, may be construed to apply to the promulgation of the rule required by subsection (a), or the modification of the rule under paragraph (2), including the following:

(A) The Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

(B) Chapter 6 of title 5, United States Code.

(C) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(D) The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), and the amendments made by that Act.

(d) EFFECTIVE DATE- The Commission shall specify in the rule prescribed under subsection (a) the effective date of the rule. The effective date may not be later than 30 months after the date of the enactment of this Act.

(e) TREATMENT OF STANDARD-

(1) IN GENERAL- The fire safety standard promulgated under subsection (a) shall be treated as a consumer product safety standard promulgated under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

(2) TREATMENT OF CIGARETTES- A cigarette shall be treated as a consumer product under section 3(a)(1)(B) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)(B)) for purposes of implementing and enforcing compliance with this Act and the standard promulgated under this Act, including for purposes of sections 17 and 18 of the Consumer Product Safety Act (15 U.S.C. 2066, 2067).

SEC. 4. PREEMPTION.

(a) IN GENERAL- This Act, and any cigarette fire safety standard established under section 3, may not be construed to preempt or otherwise affect in any way any law or regulation of a State or political subdivision thereof which prescribes a fire safety standard for cigarettes which is more stringent than a fire safety standard established under section 3.

(b) PRIVATE REMEDIES- The provisions of section 25 of the Consumer Product Safety Act (15 U.S.C. 2074) shall apply with respect to the fire safety standard promulgated under subsection (a).

SEC. 5. SCOPE OF JURISDICTION OF CONSUMER PRODUCT SAFETY COMMISSION.

Except as otherwise provided in this Act, the Commission shall have no jurisdiction over tobacco or tobacco products.

SEC. 6. DEFINITIONS.

In this Act:

(1) COMMISSION- The term 'Commission' means the Consumer Product Safety Commission.

(2) CIGARETTE- The term 'cigarette' has the meaning given that term in section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)).

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS- There is hereby authorized to be appropriated to the Consumer Product Safety Commission for fiscal year 2002, \$2,000,000 for purposes of carrying out this Act.

(b) AVAILABILITY- Amounts authorized to be appropriated by subsection (a) shall remain available until expended.