

109th CONGRESS

1st Session

S. 389

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

IN THE SENATE OF THE UNITED STATES

February 15, 2005

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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 the 'Cigarette Fire Safety Act of 2005'.

SEC. 2. FINDINGS.

The Congress makes the following findings:

- (1) Cigarette ignited fires are the leading cause of fire deaths in the United States.
- (2) In 1999 there were 807 deaths from cigarette ignited fires, 2,193 civilian injuries from such fires, and \$559,100,000 in property damage caused by such fires.
- (3) Nearly 100 children are killed each year from cigarette related fires.
- (4) For over 20 years former Member of Congress Joseph Moakley worked on behalf of burn victims, firefighters, and every individual who has lost a loved one in a fire. By securing enactment of the Cigarette Safety Act of 1984 and the Fire Safe Cigarette Act of 1990, Joseph Moakley completed the necessary technical work for a cigarette fire safety standard and paved the way for a national standard.
- (5) It is appropriate for the 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 per 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 that, except as provided in this Act, are substantively the same as the standards set forth by the State of New York in Part 429 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York, as promulgated on December 31, 2003 (in this Act referred to as the 'New York standard'), including the Appendix to such Part.

(2) Cigarettes with unique characteristics- In adapting section 4(c) of such Part 429, if the Commission determines that a cigarette, because of its unique or nontraditional characteristics, cannot be tested in accordance with the test method prescribed by the Commission, the manufacturer of such cigarette may propose a test method and performance standard for such cigarette. If the Commission finds the proposed method and standard to be equivalent to the test method and performance standard otherwise established by the Commission, the Commission may approve the method and standard and the manufacturer of such cigarette may employ such test method and performance standard to certify the cigarette pursuant to rules prescribed by this Act.

(3) Commission- In this Act, the term 'Commission' means the Consumer Product Safety Commission.

(b) Procedure-

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

(2) Modifications-

(A) Modification by sponsor- If the sponsor of the testing methodology used 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, only 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-

(A) In general- No Federal law or Executive order, including the laws listed in subparagraph (B) but not including chapters 5, 6, 7, and 8 of title 5, United States Code, commonly referred to as the Administrative Procedures Act, may be construed to apply to the promulgation of the rule required by subsection (a), or a modification of the rule under paragraph (2) of this subsection.

(B) Included laws- The Federal laws referred to in subparagraph (A) include the following:

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

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

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

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

(c) 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 24 months after the date of the enactment of this Act.

(d) 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.), except as provided in

section 4.

(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 this Act and 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 or modified pursuant to section 3, may not be construed to preempt or otherwise affect in any way any law or regulation that prescribes a fire safety standard for cigarettes--

(1) set forth by the State of New York in the New York standard; or

(2) promulgated by any State that is more stringent than the fire safety standard for cigarettes established under this section.

(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 section 3(a) of this Act.

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. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization of Appropriations- There is authorized to be appropriated to the Consumer Product Safety Commission for fiscal year 2006, \$2,000,000 for purposes of carrying out this Act.

(b) Availability- Amounts appropriated pursuant to subsection (a) shall remain available until expended.