

**Calendar No. 571**

113TH CONGRESS }  
*2d Session* }

SENATE

{ REPORT  
113-311 }

CHILD NICOTINE POISONING PREVENTION  
ACT OF 2014

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 2581



DECEMBER 12, 2014.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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### CHILD NICOTINE POISONING PREVENTION ACT OF 2014

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Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

### R E P O R T

[To accompany S. 2581]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2581) to require the Consumer Product Safety Commission to promulgate a rule to require child safety packaging for liquid nicotine containers, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE BILL

The purpose of S. 2581, the Child Nicotine Poisoning Prevention Act of 2014, is to provide the Consumer Product Safety Commission (CPSC) with statutory authority to regulate liquid nicotine containers as a consumer product. Further, S. 2581 would direct the CPSC to promulgate a safety rule requiring such products be packaged in a manner that would make them significantly difficult for a child under the age of five to open the container or otherwise access its liquid content.

#### BACKGROUND AND NEEDS

Liquid nicotine is a highly toxic substance: According to the American Academy of Pediatrics (AAP), a 15-milliliter dropper bottle filled with commercially available liquid nicotine is capable of killing four small children.<sup>1</sup> A very small amount of the substance splashed on the skin of a child can render the child very ill.

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<sup>1</sup>Senate Committee on Commerce, Science, and Transportation, Testimony of Dr. Susan Tanski on behalf of the American Academy of Pediatrics, *Aggressive E-Cigarette Marketing and Potential Consequences for Youth*, 113th Cong. (June 18, 2014) (online at

Continued

The rapid rise in the popularity of electronic cigarettes (e-cigarettes) has concomitantly ushered in a rapid rise in dangerous exposures to liquid nicotine. The American Association of Poison Control Centers (AAPCC) says the number of reported liquid nicotine exposures (from cigarette devices or containers) skyrocketed 213 percent from 2012 to 2013.<sup>2</sup> Through August 31 of this year, AAPCC reports that local poison-control centers have received 2,724 calls for liquid nicotine exposure.<sup>3</sup>

The CPSC implements and enforces the Poison Prevention Packaging Act of 1970 (PPPA),<sup>4</sup> which, among other things, provides the CPSC with the authority to promulgate rules requiring “special packaging” for products that pose a poisonous hazard to children. When the CPSC designates consumer products for special packaging, such products must be “designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time frame and not difficult for normal adults to use properly.”<sup>5</sup> Under the PPPA, the CPSC has promulgated child-proof packaging for numerous consumer products, including over-the-counter medication and household cleaning supplies.

The CPSC lacks authority under the PPPA to require similar special packaging requirements for liquid nicotine, because most liquid nicotine is derived from tobacco and is, consequently, a “tobacco product,” which is exclusively regulated by the Food and Drug Administration (FDA).<sup>6</sup> A small percentage of liquid nicotine on the market is synthetically manufactured and, thus, considered a “consumer product” under the Consumer Product Safety Act (CPSA) and subject to CPSC authority.<sup>7</sup>

#### SUMMARY OF PROVISIONS

S. 2581 would provide the CPSC with statutory authority to regulate liquid nicotine containers as a consumer product and would further direct the CPSC to promulgate a safety rule requiring such products be packaged in a manner that would make them significantly difficult for a child under the age of five to open the container or otherwise access its liquid content. S. 2581 contains a savings clause that would preserve all of the authority of the FDA.

#### LEGISLATIVE HISTORY

Senator Nelson introduced S. 2581 on July 10, 2014. The bill has 13 cosponsors, including Chairman Rockefeller and six Members of the Committee: Senators Ayotte, Blumenthal, Boxer, Klobuchar, Markey, and Pryor.

On September 17, 2014, in an open Executive Session, the Committee considered the bill and reported S. 2581 favorably without amendment by voice vote.

[www.commerce.senate.gov/public/?a=Files.Serve&File\\_\\_id=408415ee-8f64-4127-8887-62d90b34ff70](http://www.commerce.senate.gov/public/?a=Files.Serve&File__id=408415ee-8f64-4127-8887-62d90b34ff70).

<sup>2</sup> American Association of Poison Control Centers, *E-Cigarette Devices and Liquid Nicotine* (online at [www.aapcc.org/alerts/e-cigarettes/](http://www.aapcc.org/alerts/e-cigarettes/)).

<sup>3</sup> *Id.*

<sup>4</sup> Pub. L. No. 91-601 (15 U.S.C. §§ 1471 et seq.).

<sup>5</sup> 15 U.S.C. § 1471.

<sup>6</sup> 26 U.S.C. § 5702.

<sup>7</sup> 15 U.S.C. § 2052.

## ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

*S. 2581—Child Nicotine Poisoning Prevention Act of 2014*

S. 258.1 would direct the Consumer Product Safety Commission (CPSC) to develop regulations requiring special packaging for liquid nicotine containers. CBO estimates that implementing the bill would cost about \$1 million over the 2015–2019 period, assuming appropriation of the necessary amounts. Enacting S. 2581 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under the bill, the CPSC would require liquid nicotine containers to be packaged in a way that would make it difficult for children younger than five years to open or to obtain a harmful amount of the enclosed substance. Based on information from the agency, CBO estimates that the cost of developing the regulation and conducting compliance testing would total about \$1 million over the next five years.

S. 2581 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

The legislation would impose a private-sector mandate, as defined in UMRA, on manufacturers of consumer products containing liquid nicotine. The bill would require those manufacturers to use special packaging for such products to make them child resistant. The cost of this mandate would be the incremental cost of using packaging that would comply with the standard established by the CPSC. Based on data provided by the CPSC and representatives of affected manufacturers, CBO estimates that the cost of the mandate would fall below the annual threshold established in UMRA for private-sector mandates (\$152 million in 2014, adjusted annually for inflation).

The CBO staff contacts for this estimate are Daniel Hoople (for federal costs) and Mann Burnett (for the private-sector impact). The estimate was approved by Holly Harvey, Deputy Assistant Director for Budget Analysis.

## REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

## NUMBER OF PERSONS COVERED

The legislation would provide the CPSC with statutory authority to regulate liquid nicotine containers as a consumer product and would further direct the CPSC to promulgate a safety rule requiring such products be packaged in a manner that would make them significantly difficult for a child under the age of five to open the container or otherwise access its liquid content.

## ECONOMIC IMPACT

This legislation is not expected to have an adverse economic impact on the Nation.

## PRIVACY

S. 2581 would not have a negative impact on the personal privacy of individuals.

## PAPERWORK

S. 2581 would create a new reporting requirement for the CPSC. The CPSC would be directed to submit a report to Congress that evaluates the implementation of the program no later than one year after the last day of each fiscal year for which grants are awarded.

## CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 would establish the short title of the bill as the “Child Nicotine Poisoning Prevention Act of 2014.”

*Section 2. Child safety packaging for liquid nicotine containers*

Subsection (a) of section 2 would define a “liquid nicotine container” as a “consumer product” as defined by the CPSA. This definition would effectively grant the CPSC the authority to regulate all liquid nicotine products, including non-synthesized liquid nicotine derived from tobacco. The definition would limit liquid nicotine containers to products in which the liquid nicotine can be accessed through openings by consumers through “normal and foreseeable use.” As such, the definition would eliminate large commercial barrels of liquid nicotine from the scope of the bill and the ambit of CPSC authority.

Furthermore, subsection (a) of section 2 would define “special packaging” in accordance with the PPPA, which authorizes the CPSC to promulgate rules requiring child-proofing for products that pose a poisonous hazard to children. Specifically, as noted above, products subject to “special packaging” requirements must be designed or constructed in a manner that makes it significantly difficult for a child under the age of five to open the container or to otherwise access the poisonous substance inside the container.

Subsection (b) of section 2 would direct the CPSC to promulgate a rule requiring special packaging for liquid nicotine products. The CPSC would promulgate such rules under section 553 of title 5, United States Code (commonly known as the Administrative Procedure Act) and not be required to follow the more burdensome rule-

making processes under the CPSA, the PPPA, or the Federal Hazardous Substances Act.<sup>8</sup>

Subsection (b) of section 2 also contains a savings clause that would preserve all of the authority of the FDA.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

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<sup>8</sup>Pub. L. No. 86—613 (15 U.S.C. §§ 1261–1278).