

CHILD NICOTINE POISONING PREVENTION ACT OF 2015

JANUARY 11, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 3242]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3242) to require special packaging for liquid nicotine containers, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 3242, the Child Nicotine Poisoning Prevention Act of 2015, is to require special packaging commonly referred

to as child resistant or child-proof packaging for liquid nicotine containers, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

As sales of e-cigarettes increase in the United States, the accidental ingestion, absorption, and inhalation of liquid nicotine has become a growing public health and safety concern, especially among children.¹ According to the American Association of Poison Control Centers (AAPCC), liquid nicotine exposures are on the rise.² In 2012, 460 exposures were reported to the AAPCC, and in 2013 there were 1,543 reported incidents.³ Before the end of 2014, the AAPCC had received 3,638 exposure calls.⁴ Between January 1, 2015 and August 31, 2015, there were 2,209 reported exposure incidents.⁵ Similarly, the Centers for Disease Control (CDC) published a study in 2014 showing an increase in poisonings related to liquid nicotine.⁶ The study showed that calls to the CDC related to liquid nicotine poisonings had gone from one call per month in September 2010 to 215 per month in February 2014.⁷ To date, there has been one reported death attributed to nicotine poisoning from an e-liquid container.⁸ The intent of H.R. 3242 is to ensure that liquid nicotine is sold in special or child-resistant packaging, as determined and enforced by the Consumer Product Safety Commission (CPSC) under the Poison Prevention Packaging Act of 1970, to reduce accidental poisonings among children.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On July 23, 2015, the Subcommittee on Commerce, Manufacturing, and Trade met in open markup session and forwarded draft legislation of H.R. 3242 to the full Committee, without amendment, by a voice vote. On September 29 and 30, 2015, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 3242 reported to the House, without amendment, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3242 reported.

¹ *Consortium*

² American Association of Poison Control Centers Press Release. December 12, 2014. Available online at: <http://www.aapcc.org/press/37/>

³ *Id.*

⁴ *Id.*

⁵ American Association of Poison Control Centers. Electronic Cigarettes and Liquid Nicotine Data, August 31, 2015. Available online at: https://aapcc.s3.amazonaws.com/files/library/E-cig_Nicotine_Web_Data_through_8.2015_BjzqUYv.pdf

⁶ Centers for Disease Control and Prevention Press Release. New CDC Study Finds Dramatic Increase in E-Cigarette-Related Calls to Poison Centers. April 3, 2014. Available online at: <http://www.cdc.gov/media/releases/2014/p0403-e-cigarette-poison.html>.

⁷ *Id.*

⁸ American Association of Poison Control Centers Press Release. December 12, 2014. Available online at: <http://www.aapcc.org/press/37/>

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 3242 is to require special packaging—child resistant packaging—for liquid nicotine containers, and for other purposes.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3242 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 3242 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 17, 2015.

Hon. FRED UPTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3242, the Child Nicotine Poisoning Prevention Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Daniel Hoople.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 3242—Child Nicotine Poisoning Prevention Act of 2015

H.R. 3242 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 2016–2020 period, assuming the availability of appropriated funds. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 3242

would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

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.

H.R. 3242 contains an intergovernmental mandate as defined in Unfunded Mandates Reform Act (UMRA) because it would preempt some state laws that are inconsistent with regulations adopted by the CPSC governing child-resistant packaging for containers holding liquid nicotine. The preemption would have a limited effect on state laws because the majority of those laws conform to the standards outlined in the bill. While the mandate would limit the application of those state laws, it would impose no duty on states that would result in additional spending or a loss of revenues. Consequently, CBO estimates that the cost of the mandate, if any, would fall well below the threshold established in UMRA for intergovernmental mandates (\$77 million in 2015, adjusted annually for inflation).

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 from representatives of affected manufacturers about the number of products sold annually and information from the CPSC about the cost of special packaging per unit for similar products, CBO estimates that the cost of the mandate would fall below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2015, adjusted annually for inflation).

On March 26, 2015, CBO transmitted a cost estimate for S. 142, the Child Nicotine Poisoning Prevention Act of 2015. The two bills are similar and CBO's estimates of the budgetary effects are the same.

The CBO staff contacts for this estimate are Daniel Hoople (for federal costs), J'nell Blanco Suchy (for intergovernmental effects), and Amy Petz (for private-sector effects). The estimate was approved by Holly Harvey, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 3242 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section

21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 3242 does not direct any rulemakings to be completed within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides that the Act may be cited as the “Child Nicotine Poisoning Prevention Act of 2015.”

Section 2. Special packaging for liquid nicotine containers

Section 2 establishes a requirement that liquid nicotine containers that are sold, manufactured for sale, distributed for commerce, or imported in the U.S. are packaged according to special packaging standards as defined in the Poison Prevention Packaging Act of 1970. It also establishes a savings clause providing that nothing in this Act shall be construed to limit or otherwise affect the authority of the Secretary of Health and Human Services to take action regarding the manufacture, marketing, sale, distribution, importation, or packaging of nicotine, liquid nicotine containers, or electronic nicotine delivery systems. This includes the authority for final rulemakings on the proposed “Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and the Required Warning Statements for Tobacco Products” and “Nicotine Exposure Warnings and Child-Resistant Packaging for Liquid Nicotine, Nicotine-Containing E-Liquid(s), and Other Tobacco Products.”

If the Secretary decides to adopt, maintain, enforce, impose, or continue in effect any packaging requirement for liquid nicotine containers, this section directs the Secretary to do so in consultation with the CPSC. This section also sets forth definitions for terms contained within the Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.