

107TH CONGRESS
2D SESSION

S. 2317

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

IN THE SENATE OF THE UNITED STATES

APRIL 25, 2002

Mr. DURBIN (for himself, Mr. BROWNBACK, Mr. KENNEDY, and Mr. KERRY)
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.

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 “Joseph Moakley Memorial
5 Fire Safe Cigarette Act of 2002”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Cigarette ignited fires are the leading cause
9 of fire deaths in the United States.

1 (2) In 1998 there were 903 deaths from ciga-
2 rette ignited fires, 2,453 civilian injuries from such
3 fires, and \$411,700,000 in property damage caused
4 by such fires.

5 (3) Nearly 100 children are killed each year
6 from cigarette related fires.

7 (4) The results accomplished under the Ciga-
8 rette Safety Act of 1984 and the Fire Safe Cigarette
9 Act of 1990 complete the necessary technical work
10 for a cigarette fire safety standard.

11 (5) It is appropriate for Congress to require by
12 law the establishment of a cigarette fire safety
13 standard for the manufacture and importation of
14 cigarettes.

15 (6) A recent study by the Consumer Product
16 Safety Commission found that the cost of the loss of
17 human life and personal property from not having a
18 cigarette fire safety standard is \$4,600,000,000 a
19 year.

20 (7) It is appropriate that the regulatory exper-
21 tise of the Consumer Product Safety Commission be
22 used to implement a cigarette fire safety standard.

23 **SEC. 3. CIGARETTE FIRE SAFETY STANDARD.**

24 (a) IN GENERAL.—

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

6 (2) GENERAL TEST REQUIREMENTS.—

7 (A) TESTING METHODOLOGY.—Except as
8 provided in paragraph (3), in establishing
9 standards under paragraph (1), the Commission
10 shall use the testing methodology for deter-
11 mining the ignition propensity of cigarettes re-
12 ferred to in “Relative Ignition Propensity of
13 Test Market Cigarettes—National Institute of
14 Standards and Technology—NIST Technical
15 Note 1436, January, 2001—Appendix D: Ciga-
16 rette Extinction Method”, together with any re-
17 quirements specified in this paragraph.

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

22 (C) COMPLETE TEST TRIAL.—Forty rep-
23 licate tests shall be required to comprise a com-
24 plete test trial for each cigarette tested. Test
25 results and the application of an acceptance cri-

1 terion shall be derived only for complete test
2 trials comprised of 40 replicate tests.

3 (D) TEST FAILURE.—A test failure shall
4 consist of more than 25 percent of the ciga-
5 rettes tested in a test trial failing to self-extin-
6 guish before burning the full length of the to-
7 bacco column.

8 (3) CIGARETTES WITH UNIQUE CHARACTERIS-
9 TICS.—In establishing standards under paragraph
10 (1) with respect to a cigarette that cannot be tested
11 using the testing methodology referred to in para-
12 graph (2) because of unique or nontraditional char-
13 acteristics, the Commission shall accept a testing
14 methodology and acceptance criterion that are pro-
15 posed by the manufacturer or manufacturers of the
16 cigarette if the Commission, after review of the ap-
17 plication of the proposed testing methodology and
18 acceptance criterion, determines that the cigarette
19 has an ignition propensity equivalent to or less than
20 cigarettes that pass the acceptance criterion referred
21 to in paragraph (2).

22 (4) CIGARETTE PAPER.—In addition to estab-
23 lishing standards under paragraph (1), the Commis-
24 sion may also regulate the ignition propensity of cig-
25 arette paper for roll-your-own tobacco products.

1 (5) EXERCISE OF AUTHORITY.—If the Commis-
2 sion does not prescribe the standard required by
3 paragraph (1) within the time specified in that para-
4 graph, paragraph (1) shall continue to apply, and
5 the provisions of paragraph (2) shall be in effect as
6 a consumer product safety standard under the Con-
7 sumer Product Safety Act (15 U.S.C. 2051 et seq.)
8 until the Commission prescribes the standard under
9 paragraph (1).

10 (b) STOCKPILING.—

11 (1) IN GENERAL.—The Commission shall in-
12 clude in the rule prescribed under subsection (a) a
13 prohibition on the stockpiling of cigarettes to which
14 the fire safety standards in the rule will apply.

15 (2) STOCKPILING DEFINED.—In this sub-
16 section, the term “stockpiling”, in the case of a ciga-
17 rette to which a standard under subsection (a) will
18 apply, means the manufacturing or importing of the
19 cigarette, between the date the standard is issued
20 and the date the standard takes effect, at a rate
21 greater than the rate the cigarette was manufac-
22 tured or imported during the one-year period ending
23 on the date the standard is issued.

24 (c) PROCEDURE.—

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

5 (2) MODIFICATIONS.—

6 (A) MODIFICATION BY SPONSOR.—If the
7 sponsor of the testing methodology under sub-
8 section (a)(2) modifies the testing methodology
9 in any material respect, the sponsor shall notify
10 the Commission of the modification, and the
11 Commission may incorporate the modification
12 in the rule prescribed under subsection (a) if
13 the Commission determines that the modifica-
14 tion will enhance a fire safety standard estab-
15 lished under subsection (a)(2).

16 (B) MODIFICATION BY COMMISSION.—The
17 Commission may modify the rule prescribed
18 under subsection (a), including the test require-
19 ments specified in subsection (a)(2), in whole or
20 in part, if the Commission determines that com-
21 pliance with such modification is technically
22 feasible and will enhance a fire safety standard
23 established under that subsection. Any such
24 modification shall not take effect earlier than 3

1 years after the date on which the rule is first
2 issued.

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

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

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

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

17 (D) The Small Business Regulatory En-
18 forcement Fairness Act of 1996 (Public Law
19 104–121), and the amendments made by that
20 Act.

21 (d) EFFECTIVE DATE.—The Commission shall speci-
22 fy in the rule prescribed under subsection (a) the effective
23 date of the rule. The effective date may not be later than
24 30 months after the date of the enactment of this Act.

25 (e) TREATMENT OF STANDARD.—

1 (1) IN GENERAL.—The fire safety standard
 2 promulgated under subsection (a) shall be treated as
 3 a consumer product safety standard promulgated
 4 under the Consumer Product Safety Act (15 U.S.C.
 5 2051 et seq.).

6 (2) TREATMENT OF CIGARETTES.—A cigarette
 7 shall be treated as a consumer product under section
 8 3(a)(1)(B) of the Consumer Product Safety Act (15
 9 U.S.C. 2052(a)(1)(B)) for purposes of implementing
 10 and enforcing compliance with this Act and the
 11 standard promulgated under this Act, including for
 12 purposes of sections 17 and 18 of the Consumer
 13 Product Safety Act (15 U.S.C. 2066, 2067).

14 **SEC. 4. PREEMPTION.**

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

22 (b) PRIVATE REMEDIES.—The provisions of section
 23 25 of the Consumer Product Safety Act (15 U.S.C. 2074)
 24 shall apply with respect to the fire safety standard promul-
 25 gated under subsection (a).

1 **SEC. 5. SCOPE OF JURISDICTION OF CONSUMER PRODUCT**
2 **SAFETY COMMISSION.**

3 Except as otherwise provided in this Act, the Com-
4 mission shall have no jurisdiction over tobacco or tobacco
5 products.

6 **SEC. 6. DEFINITIONS.**

7 In this Act:

8 (1) COMMISSION.—The term “Commission”
9 means the Consumer Product Safety Commission.

10 (2) CIGARETTE.—The term “cigarette” has the
11 meaning given that term in section 3(1) of the Fed-
12 eral Cigarette Labeling and Advertising Act (15
13 U.S.C. 1332(1)).

14 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

15 (a) AUTHORIZATION OF APPROPRIATIONS.—There is
16 hereby authorized to be appropriated to the Consumer
17 Product Safety Commission for fiscal year 2003,
18 \$2,000,000 for purposes of carrying out this Act.

19 (b) AVAILABILITY.—Amounts authorized to be appro-
20 priated by subsection (a) shall remain available until ex-
21 pended.

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