

108TH CONGRESS  
2D SESSION

# H. R. 4155

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2004

Mr. MARKEY (for himself, Mr. KING of New York, Mr. WELDON of Pennsylvania, Mr. WAXMAN, Mr. LYNCH, Mr. TOWNS, Mr. MEEHAN, Mrs. CHRISTENSEN, Mr. MCGOVERN, Mr. OLVER, Mr. FRANK of Massachusetts, Mr. McNULTY, Ms. SLAUGHTER, Mr. DELAHUNT, Mr. CONYERS, Mr. HOLT, Ms. SCHAKOWSKY, Mr. KENNEDY of Rhode Island, Mr. MORAN of Virginia, Ms. LOFGREN, Mr. NEAL of Massachusetts, Mr. PALLONE, Mr. RANGEL, Mr. BOEHLERT, Mr. WEINER, Mr. WYNN, Mr. LIPINSKI, Mr. CAPUANO, Mr. SHERMAN, Ms. NORTON, Mrs. JONES of Ohio, Mr. ACKERMAN, Ms. JACKSON-LEE of Texas, Mr. STUPAK, Mr. SERRANO, Ms. DELAURO, Mr. VAN HOLLEN, Mr. BLUMENAUER, and Mr. ROTHMAN) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## 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 the “Cigarette Fire Safety  
5 Act of 2004”.

1 **SEC. 2. FINDINGS.**

2 The Congress makes the following findings:

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

5 (2) In 1999 there were 807 deaths from ciga-  
6 rette ignited fires, 2,193 civilian injuries from such  
7 fires, and \$559,100,000 in property damage caused  
8 by such fires.

9 (3) Nearly 100 children are killed each year  
10 from cigarette related fires.

11 (4) For over 20 years former Member of Con-  
12 gress Joseph Moakley worked on behalf of burn vic-  
13 tims, firefighters, and every individual who has lost  
14 a loved one in a fire. By securing enactment of the  
15 Cigarette Safety Act of 1984 and the Fire Safe Cig-  
16 arette Act of 1990, Joseph Moakley completed the  
17 necessary technical work for a cigarette fire safety  
18 standard and paved the way for a national standard.

19 (5) It is appropriate for the Congress to require  
20 by law the establishment of a cigarette fire safety  
21 standard for the manufacture and importation of  
22 cigarettes.

23 (6) A recent study by the Consumer Product  
24 Safety Commission found that the cost of the loss of  
25 human life and personal property from not having a

1 cigarette fire safety standard is \$4,600,000,000 per  
2 year.

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

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

7 (a) IN GENERAL.—

8 (1) REQUIREMENT FOR STANDARD.—Not later  
9 than 18 months after the date of the enactment of  
10 this Act, the Commission shall, by rule, prescribe  
11 one or more fire safety standards for cigarettes that,  
12 except as is provided in this Act, are substantively  
13 the same as the standards set forth by the State of  
14 New York in part 429 of Title 18 of the Official  
15 Compilation of Codes, Rules and Regulations of the  
16 State of New York, as promulgated on December  
17 31, 2003 (in this Act referred to as the “New York  
18 standard”), including the Appendix to such part.

19 (2) CIGARETTES WITH UNIQUE CHARACTERIS-  
20 TICS.—For purposes of this subsection, in con-  
21 struing section 4(c) of the New York standard, after  
22 “The manufacturer or manufacturers of a cigarette  
23 that the Office of Fire Prevention and Control deter-  
24 mines cannot be tested in accordance with the test  
25 method prescribed in section 3 of this Part” there

1 shall be inserted “because of unique or nontradi-  
2 tional characteristics”.

3 (3) ADDITIONAL DEFINITIONS.—For purposes  
4 of this subsection, in construing section 2 of the  
5 New York standard, there shall be added at the end  
6 thereof the following:

7 “(j) COMMISSION.—The term ‘Commission’ shall  
8 mean the Consumer Product Safety Commission.”.

9 (b) PROCEDURE.—

10 (1) IN GENERAL.—The rule under subsection  
11 (a), and any modification thereof, shall be prescribed  
12 in accordance with section 553 of title 5, United  
13 States Code.

14 (2) MODIFICATIONS.—

15 (A) MODIFICATION BY SPONSOR.—If the  
16 sponsor of the testing methodology used under  
17 subsection (a)(2) modifies the testing method-  
18 ology in any material respect, the sponsor shall  
19 notify the Commission of the modification, and  
20 the Commission may incorporate the modifica-  
21 tion in the rule prescribed under subsection (a)  
22 if the Commission determines that the modifica-  
23 tion will enhance a fire safety standard estab-  
24 lished under subsection (a)(2).

1 (B) MODIFICATION BY COMMISSION.—The  
2 Commission may modify the rule prescribed  
3 under subsection (a), including the test require-  
4 ments specified in subsection (a)(2), in whole or  
5 in part, only if the Commission determines that  
6 compliance with such modification is technically  
7 feasible and will enhance a fire safety standard  
8 established under that subsection. Any such  
9 modification shall not take effect earlier than 3  
10 years after the date on which the rule is first  
11 issued.

12 (3) INAPPLICABILITY OF CERTAIN LAWS.—

13 (A) IN GENERAL.—No Federal law or Ex-  
14 ecutive order, including the laws listed in sub-  
15 paragraph (B) but not including chapters 5, 6,  
16 7, and 8 of title 5, United States Code, com-  
17 monly referred to as the Administrative Proce-  
18 dures Act, may be construed to apply to the  
19 promulgation of the rule required by subsection  
20 (a), or a modification of the rule under para-  
21 graph (2) of this subsection.

22 (B) INCLUDED LAWS.—The Federal laws  
23 referred to in subparagraph (A) include the fol-  
24 lowing:

1 (i) The Consumer Product Safety Act  
2 (15 U.S.C. 2051 et seq.).

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

5 (iii) The National Environmental Pol-  
6 icy Act of 1969 (42 U.S.C. 4321 et seq.).

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

11 (c) EFFECTIVE DATE.—The Commission shall speci-  
12 fy in the rule prescribed under subsection (a) the effective  
13 date of the rule. The effective date may not be later than  
14 24 months after the date of the enactment of this Act.

15 (d) TREATMENT OF STANDARD.—

16 (1) IN GENERAL.—The fire safety standard  
17 promulgated under subsection (a) shall be treated as  
18 a consumer product safety standard promulgated  
19 under the Consumer Product Safety Act (15 U.S.C.  
20 2051 et seq.), except as provided in section 4.

21 (2) TREATMENT OF CIGARETTES.—A cigarette  
22 shall be treated as a consumer product under section  
23 3(a)(1)(B) of the Consumer Product Safety Act (15  
24 U.S.C. 2052(a)(1)(B)) for purposes of this Act and

1 for purposes of sections 17 and 18 of the Consumer  
2 Product Safety Act (15 U.S.C. 2066, 2067).

3 **SEC. 4. PREEMPTION.**

4 (a) IN GENERAL.—This Act, and any cigarette fire  
5 safety standard established or modified pursuant to sec-  
6 tion 3, may not be construed to preempt or otherwise af-  
7 fect in any way any law or regulation that prescribes a  
8 fire safety standard for cigarettes—

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

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

14 (b) PRIVATE REMEDIES.—The provisions of section  
15 25 of the Consumer Product Safety Act (15 U.S.C. 2074)  
16 shall apply with respect to the fire safety standard promul-  
17 gated under section 3(a) of this Act.

18 **SEC. 5. SCOPE OF JURISDICTION OF CONSUMER PRODUCT**  
19 **SAFETY COMMISSION.**

20 Except as otherwise provided in this Act, the Com-  
21 mission shall have no jurisdiction over tobacco or tobacco  
22 products.

23 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

24 (a) AUTHORIZATION OF APPROPRIATIONS.—There is  
25 authorized to be appropriated to the Consumer Product

1 Safety Commission for fiscal year 2004, \$2,000,000 for  
2 purposes of carrying out this Act.

3 (b) AVAILABILITY.—Amounts appropriated under  
4 subsection (a) shall remain available until expended.

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