

108TH CONGRESS  
2D SESSION

# S. 2643

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

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## IN THE SENATE OF THE UNITED STATES

JULY 13, 2004

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

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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”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

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

10 (2) In 1999 there were 807 deaths from ciga-  
11 rette ignited fires, 2,193 civilian injuries from such

1 fires, and \$559,100,000 in property damage caused  
2 by such fires.

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

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

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

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

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

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

2 (a) IN GENERAL.—

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

14 (2) CIGARETTES WITH UNIQUE CHARACTERIS-  
15 TICS.—In adapting section 4(c) of such Part 429, if  
16 the Commission determines that a cigarette, because  
17 of its unique or nontraditional characteristics, can-  
18 not be tested in accordance with the test method  
19 prescribed by the Commission, the manufacturer of  
20 such cigarette may propose a test method and per-  
21 formance standard for such cigarette. If the Com-  
22 mission finds the proposed method and standard to  
23 be equivalent to the test method and performance  
24 standard otherwise established by the Commission,  
25 the Commission may approve the method and stand-  
26 ard and the manufacturer of such cigarette may em-

1       ploy such test method and performance standard to  
2       certify the cigarette pursuant to rules prescribed by  
3       this Act.

4               (3) COMMISSION.—In this Act, the term “Com-  
5       mission” means the Consumer Product Safety Com-  
6       mission.

7       (b) PROCEDURE.—

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

12      (2) MODIFICATIONS.—

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

23              (B) MODIFICATION BY COMMISSION.—The  
24      Commission may modify the rule prescribed  
25      under subsection (a), including the test require-

1           ments specified in subsection (a)(2), in whole or  
2           in part, only if the Commission determines that  
3           compliance with such modification is technically  
4           feasible and will enhance a fire safety standard  
5           established under that subsection. Any such  
6           modification shall not take effect earlier than 3  
7           years after the date on which the rule is first  
8           issued.

9           (3) INAPPLICABILITY OF CERTAIN LAWS.—

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

19           (B) INCLUDED LAWS.—The Federal laws  
20           referred to in subparagraph (A) include the fol-  
21           lowing:

22                   (i) The Consumer Product Safety Act  
23                   (15 U.S.C. 2051 et seq.).

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

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

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

7 (c) EFFECTIVE DATE.—The Commission shall speci-  
 8 fy in the rule prescribed under subsection (a) the effective  
 9 date of the rule. The effective date may not be later than  
 10 24 months after the date of the enactment of this Act.

11 (d) TREATMENT OF STANDARD.—

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

17 (2) TREATMENT OF CIGARETTES.—A cigarette  
 18 shall be treated as a consumer product under section  
 19 3(a)(1)(B) of the Consumer Product Safety Act (15  
 20 U.S.C. 2052(a)(1)(B)) for purposes of this Act and  
 21 for purposes of sections 17 and 18 of the Consumer  
 22 Product Safety Act (15 U.S.C. 2066, 2067).

23 **SEC. 4. PREEMPTION.**

24 (a) IN GENERAL.—This Act, and any cigarette fire  
 25 safety standard established or modified pursuant to sec-

tion 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 2005, \$2,000,000 for purposes of carrying out this Act.

(b) AVAILABILITY.—Amounts appropriated pursuant to subsection (a) shall remain available until expended.

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