

109TH CONGRESS
1ST SESSION

S. 1406

To protect American workers and responders by ensuring the continued commercial availability of respirators and to establish rules governing product liability actions against manufacturers and sellers of respirators.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2005

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect American workers and responders by ensuring the continued commercial availability of respirators and to establish rules governing product liability actions against manufacturers and sellers of respirators.

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 “Respirator Access As-
5 surance Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Each year millions of workers, responders,
2 and citizens in the United States and around the
3 world depend on the availability of respirators made
4 in the United States for protection against exposure
5 to hazardous materials and in the event of terrorist
6 incidents, airborne disease epidemics, and other dis-
7 asters.

8 (2) Respirators are tested, and the design and
9 labeling of respirators is regulated by an inde-
10 pendent Federal agency, the National Institute for
11 Occupational Safety and Health, which is part of the
12 Centers for Disease Control and Prevention. NIOSH
13 establishes the performance standards for res-
14 pirators, independently tests and certifies that res-
15 pirators meet its standards, and performs follow-up
16 field audits of respirators to ensure continued com-
17 pliance with NIOSH performance standards. Prior
18 to the establishment of NIOSH, respirators were ap-
19 proved by the United States Bureau of Mines.

20 (3) Respirator manufacturers and sellers do not
21 and cannot control or determine the manner in
22 which their products are used.

23 (4) Manufacturers and sellers of respirators de-
24 signed and labeled in compliance with NIOSH re-
25 quirements have been named as defendants in a sub-

1 stantial number of product liability claims alleging
2 that these NIOSH-approved designs and warnings
3 are defective.

4 (5) Respirators are sold in and have an effect
5 on interstate commerce.

6 (6) Manufacturers of respirators may cease
7 making such products, in principal part because of
8 the costs of litigation.

9 (7) A continued United States capacity to man-
10 ufacture and distribute respirators is necessary to
11 assure that these products remain available. Lack of
12 availability of respirators will increase risks to the
13 health of millions of American workers and emer-
14 gency responders.

15 (8) The protections set forth in this Act are
16 needed to assure the continued commercial avail-
17 ability of lifesaving respirators.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) **MANUFACTURER.**—The term “Manufac-
21 turer” means any person who, in the course of a
22 business conducted for that purpose, designs, makes,
23 produces, packages, or labels any respirator or com-
24 ponent part of a respirator, or engages another to
25 do so.

1 (2) NIOSH.—The term “NIOSH” means the
2 National Institute for Occupational Safety and
3 Health.

4 (3) NIOSH APPROVAL.—The term “NIOSH
5 approval” means a certificate or formal document
6 issued by NIOSH stating that an individual res-
7 pirator or combination of respirators has met the
8 minimum requirements of part 84 of title 42, Code
9 of Federal Regulations, or part 11 of title 30, Code
10 of Federal Regulations, and that the manufacturer
11 is authorized to use and attach an approval label to
12 any respirator manufactured in conformance with
13 the plans and specifications upon which the approval
14 was based. For purposes of this Act, NIOSH ap-
15 proval shall also mean certification or approval by
16 any Federal Government agency with authority to
17 approve respirators, including the United States Bu-
18 reau of Mines and the Mine Safety and Health Ad-
19 ministration.

20 (4) RESPIRATOR.—The term “Respirator”
21 means any device, including component or replace-
22 ment parts for a device, designed to provide the
23 wearer with respiratory protection against inhalation
24 of a hazardous atmosphere.

1 (2) made an illegal payment to a NIOSH offi-
2 cial or employee for the purpose of securing or main-
3 taining approval of the respirator's design or label-
4 ing.

5 (c) STATUTE OF LIMITATIONS.—A statute of limita-
6 tions that would otherwise apply to claims to which sub-
7 section (b) applies shall not begin to run until the date
8 on which NIOSH withdraws its approval for the respirator
9 involved.

10 **SEC. 5. PREEMPTION AND STATUTORY CONSTRUCTION.**

11 (a) PREEMPTION.—The provisions of this Act shall
12 supersede any and all State or local laws insofar as they
13 may now or hereafter relate to any claim for defective de-
14 sign or warning relating to a respirator or any claim which
15 is based on such an allegation if such respirator complied
16 with the NIOSH-approved design and labeling in effect
17 on the date of manufacture.

18 (b) STATUTORY CONSTRUCTION.—Nothing in this
19 Act may be construed to affect any defense available to
20 a defendant under any other provision of State or Federal
21 law, or to create a cause of action or Federal court juris-
22 diction pursuant to section 1331 or 1332 of title 28,
23 United States Code, that otherwise would not exist under
24 applicable law.

1 **SEC. 6. APPLICABILITY.**

2 This Act applies to any civil action in a Federal or
3 State court, on the basis of any legal theory, for harm
4 allegedly caused, directly or indirectly, by a respirator, a
5 respirator manufacturer, or a respirator seller.

6 **SEC. 7. EFFECTIVE DATE.**

7 This Act shall become effective upon enactment and
8 shall apply to any action that has not proceeded to trial
9 as of the date of enactment, regardless of when the res-
10 pirator was manufactured or sold.

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