

109TH CONGRESS
1ST SESSION

S. 389

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2005

Mr. DURBIN 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 the “Cigarette Fire Safety
5 Act of 2005”.

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-

1 tion 3, may not be construed to preempt or otherwise af-
 2 fect in any way any law or regulation that prescribes a
 3 fire safety standard for cigarettes—

4 (1) set forth by the State of New York in the
 5 New York standard; or

6 (2) promulgated by any State that is more
 7 stringent than the fire safety standard for cigarettes
 8 established under this section.

9 (b) PRIVATE REMEDIES.—The provisions of section
 10 25 of the Consumer Product Safety Act (15 U.S.C. 2074)
 11 shall apply with respect to the fire safety standard promul-
 12 gated under section 3(a) of this Act.

13 **SEC. 5. SCOPE OF JURISDICTION OF CONSUMER PRODUCT**
 14 **SAFETY COMMISSION.**

15 Except as otherwise provided in this Act, the Com-
 16 mission shall have no jurisdiction over tobacco or tobacco
 17 products.

18 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) AUTHORIZATION OF APPROPRIATIONS.—There is
 20 authorized to be appropriated to the Consumer Product
 21 Safety Commission for fiscal year 2006, \$2,000,000 for
 22 purposes of carrying out this Act.

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

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