

# Calendar No. 482

116<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1640

[Report No. 116–235]

To require compliant flame mitigation devices to be used on portable fuel containers for flammable liquid fuels, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, MAY 22), 2019

Ms. KLOBUCHAR (for herself and Mr. MORAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JUNE 23, 2020

Reported by Mr. WICKER, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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## A BILL

To require compliant flame mitigation devices to be used on portable fuel containers for flammable liquid fuels, 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 “Portable Fuel Con-  
5 tainer Safety Act of 2019”.

1 **SEC. 2. PERFORMANCE STANDARDS TO PROTECT AGAINST**  
 2 **PORTABLE FUEL CONTAINER EXPLOSIONS**  
 3 **NEAR OPEN FLAMES OR OTHER IGNITION**  
 4 **SOURCES.**

5 (a) **RULE ON SAFETY PERFORMANCE STANDARDS**  
 6 **REQUIRED.**—Not later than 30 months after the date of  
 7 enactment of this section, the Consumer Product Safety  
 8 Commission (referred to in this Act as the “Commission”)   
 9 shall promulgate a final rule to require flame mitigation  
 10 devices in portable fuel containers that impede the propa-  
 11 gation of flame into the container, except as provided in  
 12 subsection (c).

13 (b) **RULEMAKING; CONSUMER PRODUCT SAFETY**  
 14 **STANDARD.**—A rule under subsection (a)—

15 (1) shall be promulgated in accordance with  
 16 section 553 of title 5, United States Code; and

17 (2) shall be treated as a consumer product safe-  
 18 ty rule promulgated under section 9 of the Con-  
 19 sumer Product Safety Act (15 U.S.C. 2058).

20 (c) **EXCEPTION.**—

21 (1) **VOLUNTARY STANDARD.**—Subsection (a)  
 22 shall not apply if the Commission determines that—

23 (A) there is a voluntary standard for flame  
 24 mitigation devices in portable fuel containers  
 25 that impedes the propagation of flame into the  
 26 container, or a combination of more than one

1 voluntary standard which taken together serve  
2 such purpose for the full scope of this Act;

3 (B) the voluntary standard or combination  
4 of voluntary standards described in subpara-  
5 graph (A) is or will be in effect not later than  
6 18 months after the date of enactment of this  
7 Act; and

8 (C) the voluntary standard or combination  
9 of voluntary standards described in subpara-  
10 graph (A) is developed by ASTM International  
11 or such other standard development organiza-  
12 tion that the Commission determines to have  
13 met the intent of this Act.

14 (2) DETERMINATION REQUIRED TO BE PUB-  
15 LISHED IN THE FEDERAL REGISTER.—Any deter-  
16 mination made by the Commission under this sub-  
17 section shall be published in the Federal Register.

18 (d) TREATMENT OF VOLUNTARY STANDARD FOR  
19 PURPOSE OF ENFORCEMENT.—If the Commission deter-  
20 mines that a voluntary standard meets the conditions de-  
21 scribed in subsection (c), the requirements of such vol-  
22 untary standard shall be treated as a consumer product  
23 safety rule promulgated under section 9 of the Consumer  
24 Product Safety Act (15 U.S.C. 2058) beginning on the  
25 date which is the later of—

1           (1) 180 days after publication of the Commis-  
2 sion's determination under subsection (e); or

3           (2) the effective date contained in the voluntary  
4 standard.

5 (e) REVISION OF VOLUNTARY STANDARD.—

6           (1) NOTICE TO COMMISSION.—If the require-  
7 ments of a voluntary standard that meet the condi-  
8 tions of subsection (e) are subsequently revised, the  
9 organization that revised the standard shall notify  
10 the Commission after the final approval of the revi-  
11 sion.

12           (2) EFFECTIVE DATE OF REVISION.—Not later  
13 than 180 days after the Commission is notified of a  
14 revised voluntary standard described in paragraph  
15 (1) (or such later date as the Commission deter-  
16 mines appropriate), such revised voluntary standard  
17 shall become enforceable as a consumer product  
18 safety rule promulgated under section 9 of the Con-  
19 sumer Product Safety Act (15 U.S.C. 2058), in  
20 place of the prior version, unless within 90 days  
21 after receiving the notice the Commission determines  
22 that the revised voluntary standard does not meet  
23 the requirements described in subsection (e).

24           (f) FUTURE RULEMAKING.—The Commission, at any  
25 time after publication of the consumer product safety rule

1 required by subsection (a), a voluntary standard is treated  
2 as a consumer product safety rule under subsection (d),  
3 or a revision is enforceable as a consumer product safety  
4 rule under subsection (e) may initiate a rulemaking in ac-  
5 cordance with section 553 of title 5, United States Code,  
6 to modify the requirements or to include any additional  
7 provision that the Commission determines is reasonably  
8 necessary to protect public health or safety. Any rule pro-  
9 mulgated under this subsection shall be treated as a con-  
10 sumer product safety rule promulgated under section 9 of  
11 the Consumer Product Safety Act (15 U.S.C. 2058).

12 (g) ACTION REQUIRED.—

13 (1) EDUCATION CAMPAIGN.—Not later than 1  
14 year after the date of enactment of this Act, the  
15 Commission shall undertake a campaign to educate  
16 consumers about the dangers associated with using  
17 or storing portable fuel containers for flammable liq-  
18 uids near an open flame or any other source of igni-  
19 tion.

20 (2) SUMMARY OF ACTIONS.—Not later than 2  
21 years after the date of enactment of this Act, the  
22 Commission shall submit to Congress a summary of  
23 actions taken by the Commission in such campaign.

24 (h) PORTABLE FUEL CONTAINER DEFINED.—In this  
25 section, the term “portable fuel container” means any con-

1 tainer or vessel (including any spout, cap, and other clo-  
 2 sure mechanism or component of such container or vessel  
 3 or any retrofit or aftermarket spout or component in-  
 4 tended or reasonably anticipated to be for use with such  
 5 container)—

6           (1) intended for flammable liquid fuels with a  
 7 flash point less than 140 degrees Fahrenheit, includ-  
 8 ing gasoline, kerosene, diesel, ethanol, methanol, de-  
 9 natured alcohol, or biofuels;

10           (2) that is a consumer product with a capacity  
 11 of 5 gallons or less; and

12           (3) that the manufacturer knows or reasonably  
 13 should know is used by consumers for receiving,  
 14 transporting, storing, and dispensing flammable liq-  
 15 uid fuels.

16           (i) **RULE OF CONSTRUCTION.**—This section may not  
 17 be interpreted to conflict with the Children’s Gasoline  
 18 Burn Prevention Act (Public Law 110–278; 122 Stat.  
 19 2602).

20 **SEC. 3. CHILDREN’S GASOLINE BURN PREVENTION ACT.**

21           (a) **AMENDMENT.**—Section 2(e) of the Children’s  
 22 Gasoline Burn Prevention Act (15 U.S.C. 2056 note; Pub-  
 23 lic Law 110–278) is amended by inserting after “for use  
 24 by consumers” the following: “and any receptacle for gaso-  
 25 line, kerosene, or diesel fuel, including any spout, cap, and

1 other closure mechanism and component of such recep-  
 2 tacle or any retrofit or aftermarket spout or component  
 3 intended or reasonably anticipated to be for use with such  
 4 receptacle, produced or distributed for sale to or use by  
 5 consumers for transport of, or refueling of internal com-  
 6 bustion engines with, gasoline, kerosene, or diesel fuel”.

7 (b) **APPLICABILITY.**—The amendment made by sub-  
 8 section (a) shall take effect 6 months after the date of  
 9 enactment of this section.

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Portable Fuel Container*  
 12 *Safety Act of 2019”.*

13 **SEC. 2. PERFORMANCE STANDARDS TO PROTECT AGAINST**  
 14 **PORTABLE FUEL CONTAINER EXPLOSIONS**  
 15 **NEAR OPEN FLAMES OR OTHER IGNITION**  
 16 **SOURCES.**

17 (a) **RULE ON SAFETY PERFORMANCE STANDARDS RE-**  
 18 **QUIRED.**—*Not later than 30 months after the date of enact-*  
 19 *ment of this section, the Consumer Product Safety Commis-*  
 20 *sion (referred to in this Act as the “Commission”) shall pro-*  
 21 *mulgate a final rule to require flame mitigation devices in*  
 22 *portable fuel containers that impede the propagation of*  
 23 *flame into the container, except as provided in subsection*  
 24 *(c).*

1       (b) *RULEMAKING; CONSUMER PRODUCT SAFETY*  
2 *STANDARD.—A rule under subsection (a)—*

3           (1) *shall be promulgated in accordance with sec-*  
4 *tion 553 of title 5, United States Code; and*

5           (2) *shall be treated as a consumer product safety*  
6 *rule promulgated under section 9 of the Consumer*  
7 *Product Safety Act (15 U.S.C. 2058).*

8       (c) *EXCEPTION.—*

9           (1) *VOLUNTARY STANDARD.—Subsection (a) shall*  
10 *not apply for a class of portable fuel containers in the*  
11 *scope of this Act if the Commission determines at any*  
12 *time that—*

13           (A) *there is a voluntary standard for flame*  
14 *mitigation devices for those containers that im-*  
15 *pedes the propagation of flame into the con-*  
16 *tainer;*

17           (B) *the voluntary standard described in*  
18 *subparagraph (A) is or will be in effect not later*  
19 *than 18 months after the date of enactment of*  
20 *this Act; and*

21           (C) *the voluntary standard described in*  
22 *subparagraph (A) is developed by ASTM Inter-*  
23 *national or such other standard development or-*  
24 *ganization that the Commission determines to*  
25 *have met the intent of this Act.*

1           (2) *DETERMINATION REQUIRED TO BE PUB-*  
2           *LISHED IN THE FEDERAL REGISTER.*—Any deter-  
3           *mination made by the Commission under this sub-*  
4           *section shall be published in the Federal Register.*

5           (d) *TREATMENT OF VOLUNTARY STANDARD FOR PUR-*  
6           *POSE OF ENFORCEMENT.*—If the Commission determines  
7           *that a voluntary standard meets the conditions described*  
8           *in subsection (c), the requirements of such voluntary stand-*  
9           *ard shall be treated as a consumer product safety rule pro-*  
10          *mulgated under section 9 of the Consumer Product Safety*  
11          *Act (15 U.S.C. 2058) beginning on the date which is the*  
12          *later of—*

13                 (1) *180 days after publication of the Commis-*  
14                 *sion's determination under subsection (c); or*

15                 (2) *the effective date contained in the voluntary*  
16                 *standard.*

17           (e) *REVISION OF VOLUNTARY STANDARD.*—

18                 (1) *NOTICE TO COMMISSION.*—If the require-  
19                 *ments of a voluntary standard that meet the condi-*  
20                 *tions of subsection (c) are subsequently revised, the or-*  
21                 *ganization that revised the standard shall notify the*  
22                 *Commission after the final approval of the revision.*

23                 (2) *EFFECTIVE DATE OF REVISION.*—Not later  
24                 *than 180 days after the Commission is notified of a*  
25                 *revised voluntary standard described in paragraph*

1       (1) (or such later date as the Commission determines  
2       appropriate), such revised voluntary standard shall  
3       become enforceable as a consumer product safety rule  
4       promulgated under section 9 of the Consumer Product  
5       Safety Act (15 U.S.C. 2058), in place of the prior  
6       version, unless within 90 days after receiving the no-  
7       tice the Commission determines that the revised vol-  
8       untary standard does not meet the requirements de-  
9       scribed in subsection (c).

10       (f) *FUTURE RULEMAKING.*—The Commission, at any  
11       time after publication of the consumer product safety rule  
12       required by subsection (a), a voluntary standard is treated  
13       as a consumer product safety rule under subsection (d), or  
14       a revision is enforceable as a consumer product safety rule  
15       under subsection (e), may initiate a rulemaking in accord-  
16       ance with section 553 of title 5, United States Code, to mod-  
17       ify the requirements or to include any additional provision  
18       that the Commission determines is reasonably necessary to  
19       protect the public against flame jetting from a portable fuel  
20       container. Any rule promulgated under this subsection shall  
21       be treated as a consumer product safety rule promulgated  
22       under section 9 of the Consumer Product Safety Act (15  
23       U.S.C. 2058).

24       (g) *ACTION REQUIRED.*—

1           (1) *EDUCATION CAMPAIGN.*—Not later than 1  
2           year after the date of enactment of this Act, the Com-  
3           mission shall undertake a campaign to educate con-  
4           sumers about the dangers associated with using or  
5           storing portable fuel containers for flammable liquids  
6           near an open flame or any other source of ignition.

7           (2) *SUMMARY OF ACTIONS.*—Not later than 2  
8           years after the date of enactment of this Act, the Com-  
9           mission shall submit to Congress a summary of ac-  
10          tions taken by the Commission in such campaign.

11          (h) *PORTABLE FUEL CONTAINER DEFINED.*—In this  
12          section, the term “portable fuel container” means any con-  
13          tainer or vessel (including any spout, cap, and other closure  
14          mechanism or component of such container or vessel or any  
15          retrofit or aftermarket spout or component intended or rea-  
16          sonably anticipated to be for use with such container)—

17               (1) *intended for flammable liquid fuels with a*  
18               *flash point less than 140 degrees Fahrenheit, includ-*  
19               *ing gasoline, kerosene, diesel, ethanol, methanol, dena-*  
20               *tured alcohol, or biofuels;*

21               (2) *that is a consumer product with a capacity*  
22               *of 5 gallons or less; and*

23               (3) *that the manufacturer knows or reasonably*  
24               *should know is used by consumers for transporting,*  
25               *storing, and dispensing flammable liquid fuels.*

1       (i) *RULE OF CONSTRUCTION.*—*This section may not*  
2 *be interpreted to conflict with the Children’s Gasoline Burn*  
3 *Prevention Act (Public Law 110–278; 122 Stat. 2602).*

4 **SEC. 3. CHILDREN’S GASOLINE BURN PREVENTION ACT.**

5       (a) *AMENDMENT.*—*Section 2(c) of the Children’s Gaso-*  
6 *line Burn Prevention Act (15 U.S.C. 2056 note; Public Law*  
7 *110–278) is amended by inserting after “for use by con-*  
8 *sumers” the following: “and any receptacle for gasoline, ker-*  
9 *osene, or diesel fuel, including any spout, cap, and other*  
10 *closure mechanism and component of such receptacle or any*  
11 *retrofit or aftermarket spout or component intended or rea-*  
12 *sonably anticipated to be for use with such receptacle, pro-*  
13 *duced or distributed for sale to or use by consumers for*  
14 *transport of, or refueling of internal combustion engines*  
15 *with, gasoline, kerosene, or diesel fuel”.*



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116<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1640**

[Report No. 116-235]

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## **A BILL**

To require compliant flame mitigation devices to be used on portable fuel containers for flammable liquid fuels, and for other purposes.

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JUNE 23, 2020

Reported with an amendment