

106TH CONGRESS  
1ST SESSION

# S. 730

To direct the Consumer Product Safety Commission to promulgate fire safety standards for cigarettes, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 25, 1999

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 direct the Consumer Product Safety Commission to promulgate 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, FINDINGS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Fire Safe Cigarette Act of 1999”.

6       (b) FINDINGS.—Congress finds that—

7               (1) cigarette ignited fires are the leading cause  
8       of fire deaths in the United States;

9               (2) in 1996 cigarette ignited fires caused—

10               (A) 1,083 deaths;

1 (B) 2,809 civilian injuries; and

2 (C) \$420,000,000 in property damage;

3 (3) each year, more than 100 children are killed  
4 from cigarette-related fires;

5 (4) the technical work necessary to achieve a  
6 cigarette fire safety standard has been accomplished  
7 under the Cigarette Safety Act of 1984 (15 U.S.C.  
8 2054 note) and the Fire Safe Cigarette Act of 1990  
9 (15 U.S.C. 2054 note);

10 (5) it is appropriate for Congress to require the  
11 establishment of a cigarette fire safety standard for  
12 the manufacture and importation of cigarettes;

13 (6) the most recent study by the Consumer  
14 Product Safety Commission found that the cost of  
15 the loss of human life and personal property from  
16 the absence of a cigarette fire safety standard is  
17 \$6,000,000,000 a year; and

18 (7) it is appropriate that the regulatory exper-  
19 tise of the Consumer Product Safety Commission be  
20 used to implement a cigarette fire safety standard.

21 **SEC. 2. DEFINITIONS.**

22 In this Act:

23 (1) COMMISSION.—The term “Commission”  
24 means the Consumer Product Safety Commission.

1           (2) CIGARETTE.—The term “cigarette” has the  
2           meaning given that term in section 3 of the Federal  
3           Cigarette Labeling and Advertising Act (15 U.S.C.  
4           1332).

5           (3) STOCKPILING.—The term “stockpiling”  
6           means the manufacturing or importing of a cigarette  
7           during the period beginning on the date of promul-  
8           gation of a rule under section 3(a) and ending on  
9           the effective date of that rule, at a rate greater than  
10          the rate at which cigarettes were manufactured or  
11          imported during the 1-year period immediately pre-  
12          ceding the date of promulgation of that rule.

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

14          (a) IN GENERAL.—

15               (1) PROMULGATION OF CIGARETTE FIRE SAFE-  
16               TY STANDARD.—Not later than 18 months after the  
17               date of enactment of this Act, the Commission shall  
18               promulgate a rule that establishes a cigarette fire  
19               safety standard for cigarettes to reduce the risk of  
20               ignition presented by cigarettes.

21               (2) REQUIREMENTS.—In establishing the ciga-  
22               rette fire safety standard under paragraph (1), the  
23               Commission shall—

24                       (A) consult with the Director of the Na-  
25                       tional Institute of Standards and Technology

1 and make use of such capabilities of the as the  
2 Commission considers necessary;

3 (B) seek the advice and expertise of the  
4 heads of other Federal agencies and State agen-  
5 cies engaged in fire safety; and

6 (C) take into account the final report to  
7 Congress made by the Commission and the  
8 Technical Study Group on Cigarette and Little  
9 Cigar Fire Safety established under section 3 of  
10 the Fire Safe Cigarette Act of 1990 (15 U.S.C.  
11 2054 note), that includes a finding that ciga-  
12 rettes with a low ignition propensity were al-  
13 ready on the market at the time of the prepara-  
14 tion of the report.

15 (b) STOCKPILING.—The Commission shall include in  
16 the rule promulgated under subsection (a) a prohibition  
17 on the stockpiling of cigarettes covered by the rule.

18 (c) EFFECTIVE DATE OF RULE.—The rule promul-  
19 gated under subsection (a) shall take effect not later than  
20 30 months after the date of the enactment of this Act.

21 (d) PROCEDURE.—

22 (1) IN GENERAL.—The rule under subsection  
23 (a) shall be promulgated in accordance with section  
24 553 of title 5, United States Code.

1           (2) CONSTRUCTION.—Except as provided in  
2 paragraph (1), no other provision of Federal law  
3 shall be construed to apply with respect to the pro-  
4 mulgation of a rule under subsection (a),  
5 including—

6           (A) the Consumer Product Safety Act (15  
7 U.S.C. 2051 et seq.);

8           (B) chapter 6 of title 5, United States  
9 Code;

10          (C) the National Environmental Policy Act  
11 of 1969 (42 U.S.C. 4321 et seq.); and

12          (D) the Small Business Regulatory En-  
13 forcement Fairness Act of 1996 (Public Law  
14 104–121) and the amendments made by that  
15 Act.

16 (e) JUDICIAL REVIEW.—

17          (1) GENERAL RULE.—

18           (A) IN GENERAL.—Any person who is ad-  
19 versely affected by the rule promulgated under  
20 subsection (a) may, at any time before the 60th  
21 day after the Commission promulgates the rule,  
22 file a petition with the United States Court of  
23 Appeals for the District of Columbia Circuit or  
24 for any other circuit in which that person re-

1 sides or has its principal place of business to  
2 obtain judicial review of the rule.

3 (B) PETITION.—Upon the filing of a peti-  
4 tion under subparagraph (A), a copy of the pe-  
5 tition shall be transmitted by the clerk of the  
6 court to the Secretary of Commerce. The Com-  
7 mission shall file in the court the record of the  
8 proceedings on which the Commission based the  
9 rule, in the same manner as is prescribed for  
10 the review of an order issued by an agency  
11 under section 2112 of title 28, United States  
12 Code.

13 (2) ADDITIONAL EVIDENCE.—

14 (A) IN GENERAL.—With respect to a peti-  
15 tion filed under paragraph (1), the court may  
16 order additional evidence (and evidence in re-  
17 buttal thereof) to be taken before the Commis-  
18 sion in a hearing or in such other manner, and  
19 upon such terms and conditions, as the court  
20 considers appropriate, if the petitioner—

21 (i) applies to the court for leave to ad-  
22 duce additional evidence; and

23 (ii) demonstrates, to the satisfaction  
24 of the court, that—

1 (I) such additional evidence is  
2 material; and

3 (II) there was no opportunity to  
4 adduce such evidence in the pro-  
5 ceeding before the Commission.

6 (B) MODIFICATION.—With respect to the  
7 rule promulgated by the Commission under sub-  
8 section (a), the Commission—

9 (i) may modify the findings of fact of  
10 the Commission, or make new findings, by  
11 reason of any additional evidence taken by  
12 a court under subparagraph (A); and

13 (ii) if the Commission makes a modi-  
14 fication under clause (i), shall file with the  
15 court the modified or new findings, to-  
16 gether with such recommendations as the  
17 Commission determines to be appropriate,  
18 for the modification of the rule, to be pro-  
19 mulgated as a final rule under subsection  
20 (a).

21 (3) COURT JURISDICTION.—Upon the filing of  
22 a petition under paragraph (1), the court shall have  
23 jurisdiction to review the rule of the Commission, as  
24 modified under paragraph (2), in accordance with  
25 chapter 7 of title 5, United States Code.

1 (f) SMALL BUSINESS REVIEW.—Section 30 of the  
2 Small Business Act (15 U.S.C. 657) shall not apply with  
3 respect to—

4 (1) a cigarette fire safety standard promulgated  
5 by the Commission under subsection (a); or

6 (2) any agency action taken to enforce that  
7 standard.

8 **SEC. 4. ENFORCEMENT.**

9 (a) PROHIBITION.—No person may—

10 (1) manufacture or import a cigarette, unless  
11 the cigarette is in compliance with a cigarette fire  
12 safety standard promulgated under section 3(a); or

13 (2) fail to provide information as required  
14 under this Act.

15 (b) PENALTY.—A violation of subsection (a) shall be  
16 considered a violation of section 19 of the Consumer Prod-  
17 uct Safety Act (15 U.S.C. 2068).

18 **SEC. 5. PREEMPTION.**

19 (a) IN GENERAL.—This Act, including the cigarette  
20 fire safety standard promulgated under section 3(a), shall  
21 not be construed to preempt or otherwise affect in any  
22 manner any law of a State or political subdivision thereof  
23 that prescribes a fire safety standard for cigarettes that  
24 is more stringent than the standard promulgated under  
25 section 3(a).

1       (b) DEFENSES.—In any civil action for damages,  
2 compliance with the fire safety standard promulgated  
3 under section 3(a) may not be admitted as a defense.

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