

109TH CONGRESS
1ST SESSION

H. R. 2357

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 HOUSE OF REPRESENTATIVES

MAY 12, 2005

Mr. SHUSTER (for himself, Mr. HOLDEN, Ms. HART, and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

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

10 (2) Respirators are tested, and the design and
11 labeling of respirators is regulated by an inde-
12 pendent federal agency, the National Institute for
13 Occupational Safety and Health (NIOSH), which is
14 part of the federal Centers for Disease Control and
15 Prevention. NIOSH establishes the performance
16 standards for respirators, independently tests and
17 certifies respirators to its standards, and performs
18 follow-up field audits of respirators to ensure contin-
19 ued compliance with NIOSH performance standards.
20 Prior to the establishment of NIOSH, respirators
21 were approved by the United States Bureau of
22 Mines.

23 (3) Respirator manufacturers and sellers do not
24 and cannot control or determine the manner in
25 which their products are used.

1 (4) Manufacturers and sellers of respirators de-
2 signed and labeled in compliance with NIOSH re-
3 quirements have been named as defendants in a sub-
4 stantial number of product liability claims alleging
5 that these NIOSH-approved designs and warnings
6 are defective.

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

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

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

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

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) “Manufacturer” means any person who, in
24 the course of a business conducted for that purpose,
25 designs, makes, produces, packages, or labels any

1 respirator or component part of a respirator, or en-
2 gages another to do so.

3 (2) “NIOSH” means the National Institute for
4 Occupational Safety and Health.

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

20 (4) “Respirator” means any device designed to
21 provide the wearer with respiratory protection
22 against inhalation of hazardous materials.

23 (5) “Seller” means a person or entity, including
24 a retailer, distributor, or wholesaler, that is regularly
25 engaged in selling respirators.

1 **SEC. 4. EFFECT OF NIOSH APPROVAL OF DESIGN AND LA-**
2 **BELING.**

3 A manufacturer or seller of a respirator shall not be
4 subject to any claim for defective design or warning or
5 any claim which is based on such an allegation if such
6 respirator has received a NIOSH approval, and such res-
7 pirator is manufactured in compliance with the NIOSH-
8 approved design and labeling. This provision shall not
9 apply to a respirator that fails to comply with the NIOSH-
10 approved design and labeling standards.

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

12 (a) **PREEMPTION.**—The provisions of this Act shall
13 supersede any and all State or local laws insofar as they
14 may now or hereafter relate to any claim for defective de-
15 sign or warning or any claim which is based on such an
16 allegation if such respirator has received a NIOSH ap-
17 proval.

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 jurisdic-
22 tion pursuant to section 1331 or 1332 of title 28, United
23 States Code, that otherwise would not exist under applica-
24 ble 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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