

109TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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

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**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.