

Testimony on HB 916

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Burn Foundation

(My name is.....)

The mission of the Burn Foundation, which represents five burn center hospitals in Eastern Pennsylvania and New Jersey, is to strengthen burn care and prevent burn injury. In support of this dual mission, the Foundation watches carefully the trends in burn admissions, both locally and nationally.

We note with optimism that the number of severe burn injuries in the United States appears to be declining slightly but steadily, over the past two decades. There are many factors associated with this decline. Some of them, such as a reduction in smoking, were not directly intended to produce this result. We are certain however that the conscious employment of a variety of tools in the interest of reducing the toll from fires and burns has played a major role. These include public education, product redesign, legislation and litigation.

These tools are mutually supportive, and the deletion of any one from the prevention arsenal will weaken all the others. Our concern with HB 916 is that it would greatly reduce the effectiveness of litigation as a means of spurring product redesign, and in turn weaken the incentive for employment of the alternative tools when litigation is threatened.

Litigation has been an extremely effective tool with respect to the fire danger represented by two products in recent years. Following a \$3.5 million punitive damage award in the 1981 case of Grimshaw v. Ford Motor Co., the Ford Pinto fuel system was redesigned. And flammable baby clothes made from material only slightly less flammable than newspaper were withdrawn from the market following a \$1 million punitive damage award in Gryc v. Dayton Hudson Company (1980). Litigation may eventually be effective as well in forcing the redesign or removal from the market of certain brands

of disposable cigarette lighters.

To help build the case for preventing burn injury, the Burn Foundation collects data on the relationship between the causes of injury and the charges associated with their treatment in the Foundation's five member burn centers. We have data on these charges for the hospital care of 300 patients with flame injuries associated with an identified ignition source for the years 1987 and 1988.

An ignition source we are particularly concerned about is cigarettes. Between five and 10 percent of the patients and 10 to 15% of the patient days in our burn centers each year represent cigarette fires. For 56 such patients treated in our burn centers in 1987 and 1988, total hospital charges averaged just over \$100,000. An unknown additional number of patients may have been treated for lesser burn injuries or for inhalation injury in such fires. Unless the inhalation injury is accompanied by an external burn, or a burn injury exceed 10% body surface area, such patients normally are not referred to burn centers.

For burn center patients, the \$100,000 average charges figure is 50% more than the average charges for injuries associated with any other ignition source. This projects to about \$4 million in hospital charges each year just in Pennsylvania's seven burn center hospitals, for the treatment of an estimated 40 patients burned in cigarette fires. Since our technology and our training are geared to care of the most severely ill or injured patients, these cost figures understate significantly the true resource costs resulting from cigarette injuries. And hospital charges are just a part of the total cost picture. My colleague Alan Breslau of the Phoenix Society will address both the unquantifiable human costs of severe burn injuries, and his experiences with litigation as a means of redressing the wrongs represented by these injuries.

Though the cigarette fire toll, like smoking itself, is declining, the numbers are still staggering. In Philadelphia, about 30 deaths, 100 serious injuries, and over a million dollars in property damage still result each year from fires started by dropped cigarettes. For the state as a whole, approximately 75 deaths a year, 300 serious injuries, and some \$20 million in property damage are involved. This represents the proportional allocation

of five percent of the national estimates, reflecting Pennsylvania's share of the national population.

We've been slow to take on the most immediate cause of this problem, the cigarette itself. We've tried educating the "careless smoker", but the vast majority are comprised by alcohol, drugs, medications or senility when these accidents occur. We've made children's clothing less flammable, and that has reduced matchplay injuries, but we've not imposed similar standards on adult clothing. We've put in smoke detectors, which has helped considerably, but installation has stalled at the level of about 75% of our nation's households.

Why not take on the cigarette itself? Twenty-five years ago, we expanded our approach to "careless driving" beyond speed limits and driver education, to take in the design of cars and highways. A similar approach to cigarettes, which have a similar propensity to affect both "guilty" and innocent victims, is long overdue.

Until two years ago, we had little information to go on. The 1987 report by the Technical Study Group on Cigarette and Little Cigar Fire Safety has changed that drastically. In a study mandated by the Cigarette Fire Safety Act of 1984, whose main sponsor was Pennsylvania Senator John Heinz, the group concluded that it "is technically feasible, and may be commercially feasible, to produce a cigarette with a substantially reduced propensity to ignite fires in furniture and mattresses." The report and its conclusions were unanimously approved by the 15-member study panel, which included four tobacco industry scientists.

According to the study report, changing the cigarette technically is apparently not difficult. Federal reserachers found that experimental cigarettes, produced by tobacco companies on existing machinery, started far fewer fires in test conditions when made with slightly altered physical chacteristics, such as lower density, smaller circumference, and the elimination of the chemicals currently added to standardize the burning time of cigarettes. Toxicity levels were not significantly different when compared with those of existing commercial cigarettes.

A major outcome of the study was the introduction of two alternative pieces of

federal legislation. One would mandate the establishment of a fire-safe cigarette standard within one year, under the auspices of the U.S. Consumer Product Safety Commission, and compliance with the standard by cigarette manufacturers within an additional year. The other bill, sponsored mainly by Congressmen and Senators from tobacco-producing states, calls simply for more studies. It does not so much as identify a federal agency to even consider the development of a standard.

If the more progressive of these two measures should pass, we see hope for a reduction in the toll in lives and property from cigarette fires. However, we are not confident that either measure will be successful. Given the lack of movement at the federal level, the states are reviving their interest in fire-safe cigarette legislation. A bill is in fact now being drafted for introduction in the Pennsylvania legislature, calling for the creation of such a standard. Even if a federal bill passes, we are not sure that the regulatory process, given the current anti-regulatory mindset in Washington, will move promptly or effectively to get a standard in place.

Given the vacuum in Washington, litigation at the state level is proving increasingly successful as a means of reducing environmental hazards, and should not be stymied by so-called tort reform. Since the potential for successful litigation remains the major recourse, for smokers, those potentially vulnerable to their dropped cigarettes, and those who are seeking a reduction in the human and property toll from cigarette fires.

Litigation without the possibility of punitive damages represents a minor threat to an industry which spends 2.5 billion dollars a year simply to promote its products. Without the incentive for lawyers to invest substantial resources in drawn-out litigation, large numbers of injured people would have no way to go. Even the costs of successful suits could simply be written off as a cost of doing business.

For these reasons, we urge the defeat of HB 916.