

**Calendar No. 322**

103D CONGRESS  
1ST SESSION

**S. 680**

**[Report No. 103-195]**

**A BILL**

To provide for toy safety and for other purposes.

NOVEMBER 19 (legislative day, NOVEMBER 2), 1993

Reported with an amendment

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# S. 680

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## IN THE SENATE OF THE UNITED STATES

MARCH 31 (legislative day, MARCH 3), 1993

Mr. GORTON (for himself, Mr. ROCKEFELLER, Mr. BRYAN, Mr. DeCONCINI, Mr. LIEBERMAN, and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

NOVEMBER 19 (legislative day, NOVEMBER 2), 1993

Reported by Mr. HOLLINGS, with an amendment

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

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## A BILL

To provide for toy safety 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 “Child Safety Protection  
5       Act”.

1 **SEC. 2. REQUIREMENTS FOR LABELING AND BANNING.**

2 ~~(a) TOYS OR GAMES FOR CHILDREN WHO ARE AT~~  
3 ~~LEAST 3.—~~

4 ~~(1) REQUIREMENT.—The packaging of any toy~~  
5 ~~or game intended for use by children who are at~~  
6 ~~least 3 years old but not older than 6 years or such~~  
7 ~~other upper age limit as the Commission may deter-~~  
8 ~~mine which may not be less than 5 years old, any~~  
9 ~~descriptive materials which accompany such toy or~~  
10 ~~game, and the bin, container for retail display, or~~  
11 ~~vending machine from which it is dispensed shall~~  
12 ~~bear or contain the cautionary label described in~~  
13 ~~paragraph (2) if the toy or game—~~

14 ~~(A) is manufactured for sale, offered for~~  
15 ~~sale, or distributed in commerce in the United~~  
16 ~~States, and~~

17 ~~(B) includes a small part, as defined by~~  
18 ~~the Commission.~~

19 ~~In the case of such a toy or game dispensed from~~  
20 ~~a vending machine, the packaging of such toy or~~  
21 ~~game shall not be required to bear the cautionary~~  
22 ~~label described in paragraph (2).~~

23 ~~(2) LABEL.—The cautionary label required~~  
24 ~~paragraph (1) for a toy or game shall be as follows:~~

1

2       ~~(b) BALLOONS, SMALL BALLS, AND MARBLES AND~~  
3 ~~TOYS AND GAMES.—~~

4           ~~(1) REQUIREMENT.—In the case of any balloon,~~  
5 ~~small ball intended for children 3 years of age or~~  
6 ~~older, marble intended for children 3 years of age or~~  
7 ~~older, or any toy or game which contains such a bal-~~  
8 ~~loon, small ball, or marble, which is manufactured~~  
9 ~~for sale, offered for sale, or distributed in commerce~~  
10 ~~in the United States—~~

11           ~~(A) the packaging of such balloon, small~~  
12 ~~ball, or marble or toy or game,~~

13           ~~(B) any descriptive materials which accom-~~  
14 ~~pany such balloon, small ball, or marble or toy~~  
15 ~~or game, and~~

16           ~~(C) the bin or container for retail display~~  
17 ~~of a balloon, small ball, or marble or toy or~~  
18 ~~game or the vending machine from which the~~  
19 ~~balloon, small ball, or marble or toy or game is~~  
20 ~~dispensed,~~

1 shall contain the cautionary label described in para-  
2 graph (2). In the case of such a balloon, small ball,  
3 or marble or toy or game dispensed from a vending  
4 machine, the packaging of such a balloon, small ball,  
5 or marble or toy or game shall not be required to  
6 bear the cautionary label described in paragraph (2).

7 (2) LABEL.—The cautionary label required  
8 under paragraph (1) for a balloon, small ball, mar-  
9 ble, or toy or game shall be as follows:

10 (A) BALLOONS.—

11 (B) SMALL BALLS.—

1                   ~~(C) MARBLES, TOYS, AND GAMES.—~~

2                   ~~(3) DEFINITION.—For purposes of this sub-~~  
3                   ~~section, a small ball is a ball with a diameter of 1.75~~  
4                   ~~inches or less.~~

5                   ~~(c) GENERAL LABELING REQUIREMENTS.—All label-~~  
6                   ~~ing required under subsection (a) or (b) for a toy or game~~  
7                   ~~or balloon, small ball, or marble shall—~~

8                   ~~(1) be prominently and conspicuously displayed~~  
9                   ~~on the packaging of the toy or game or balloon,~~  
10                  ~~small ball, or marble, on any descriptive materials~~  
11                  ~~which accompany the toy or game or balloon, small~~  
12                  ~~ball, or marble, and on the bin or container for retail~~  
13                  ~~display of the toy or game or balloon, small ball, or~~  
14                  ~~marble or the vending machine from which the toy~~  
15                  ~~or game or balloon, small ball, or marble is dis-~~  
16                  ~~persed, and~~

17                  ~~(2) be visible and noticeable.~~

18                  ~~(d) ENFORCEMENT.—The requirements of sub-~~  
19                  ~~sections (a), (b), and (c) shall be considered to be a regula-~~  
20                  ~~tion issued by the Consumer Product Safety Commission~~

1 under section 3(b) of the Federal Hazardous Substances  
2 Act (15 U.S.C. 1262(b)).

3 ~~(c) OTHER SMALL BALLS.—A small ball—~~

4 ~~(1) intended for children under the age of 3,~~  
5 ~~and~~

6 ~~(2) with a diameter of 1.75 inches or less,~~

7 shall be considered a banned hazardous substance under  
8 section 2(q) of the Federal Hazardous Substances Act.

9 **SEC. 3. REGULATIONS AND EFFECTIVE DATE.**

10 ~~(a) REGULATIONS.—The Consumer Product Safety~~  
11 ~~Commission shall promulgate regulations, under section~~  
12 ~~553 of title 5, United States Code, for the implementation~~  
13 ~~of section 2 by January 1, 1994. Subsections (f) through~~  
14 ~~(i) of section 3 of the Federal Hazardous Substances Act~~  
15 ~~(15 U.S.C. 1262) shall not apply with respect to the issu-~~  
16 ~~ance of regulations under this subsection.~~

17 ~~(b) EFFECTIVE DATE.—Section 2 shall take effect~~  
18 ~~February 1, 1994, with respect to products entered into~~  
19 ~~commerce on or after that date.~~

20 **SEC. 4. BICYCLE HELMETS.**

21 ~~(a) INITIAL STANDARD.—Within 9 months of the~~  
22 ~~date of the enactment of this Act, all bicycle helmets man-~~  
23 ~~ufactured after the expiration of such 9 months shall con-~~  
24 ~~form to—~~

25 ~~(1) the ANSI standard designated Z90.4—1984,~~

1           (2) the 1990 Snell Memorial Foundation Stand-  
2           ard for Protective Headgear for Use in Bicycling,  
3           B-90, or

4           (3) such other standard as the Commission de-  
5           termines is appropriate,

6           until a standard under subsection (b) takes effect. A hel-  
7           met which does not conform to a standard identified in  
8           paragraph (1), (2), or (3) shall, until the standard takes  
9           effect under subsection (b), be considered in violation of  
10          a consumer product safety standard issued under the  
11          Consumer Product Safety Act.

12          (b) PROCEEDING.—Within 60 days of the date of the  
13          enactment of this Act, the Consumer Product Safety Com-  
14          mission shall begin a proceeding under section 553 of title  
15          5, United States Code, to—

16               (1) harmonize the requirements of the ANSI  
17               standard, the Snell standard, and other appropriate  
18               standards into a standard of the Commission,

19               (2) include in the standard of the Commission  
20               provisions to protect against helmets rolling off the  
21               heads of riders,

22               (3) include in the standard of the Commission  
23               standards which address risk of injury to children,  
24               and

25               (4) include additional provisions as appropriate.



1 The standard developed under paragraphs (1) through (4)  
 2 shall be considered a consumer product safety standard  
 3 issued under the Consumer Product Safety Act and shall  
 4 take effect 1 year after the date it is issued. Sections 7,  
 5 9, and 30(d) of the Consumer Product Safety Act (15  
 6 U.S.C. 2056, 2058, 2079(d)) shall not apply to any pro-  
 7 ceeding under this subsection and section 11 of such Act  
 8 (15 U.S.C. 2060) shall not apply with respect to any  
 9 standard issued as a result of such proceeding.

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Child Safety Protection*  
 12 *Act”.*

13 **SEC. 2. FINDINGS.**

14 *The Congress makes the following findings:*

15 *(1) According to the Consumer Product Safety*  
 16 *Commission (hereinafter referred to as the “Commis-*  
 17 *sion”), between January 1980 and July 1981, 284*  
 18 *children under the age of 10 years choked to death. Of*  
 19 *these 284 deaths, 186 involved children’s products, in-*  
 20 *cluding balloons, marbles, balls, and other toys. Be-*  
 21 *tween January 1, 1992, and September 30, 1993, 30*  
 22 *children died from toy-related causes, with almost*  
 23 *one-half of that number (14) from choking. In addi-*  
 24 *tion, the Commission estimates that in 1992 alone*  
 25 *there were 177,200 toy-related injuries serious enough*

1     *to be treated in United States hospital emergency*  
2     *rooms, with almost one-half of the injuries to children*  
3     *under 5 years of age.*

4             *(2) Currently, at the Federal level, there are no*  
5     *required warning labels for toys intended for children*  
6     *over 3 years of age, which may present hazards for*  
7     *children under this age. Although many toy manufac-*  
8     *turers voluntarily place a label on such items that*  
9     *state “for ages three and up”, consumers often mis-*  
10    *interpret these age labels as developmental rec-*  
11    *ommendations rather than safety warnings indicating*  
12    *a possible choking hazard.*

13            *(3) According to a study published in the June*  
14    *5, 1991, issue of the Journal of the American Medical*  
15    *Association entitled, “The Impact of Specific Toy*  
16    *Warning Labels”, current warning labels on toys may*  
17    *not be sufficiently explicit to alert buyers of toys with*  
18    *small parts to the potential choking hazard to chil-*  
19    *dren under 3 years of age. The study further con-*  
20    *cludes that more specific labeling might substantially*  
21    *reduce potentially hazardous toy purchases.*

22            *(4) Between 1984 and 1988, 2,985 bicyclists in*  
23    *the United States died from head injuries and*  
24    *905,752 suffered head injuries that required treatment*  
25    *in hospital emergency rooms. Deaths and injuries*

11 **SEC. 3. REQUIREMENTS FOR LABELING CERTAIN TOYS AND**  
12 **GAMES.**

17 ***“SEC. 24. REQUIREMENTS FOR LABELING CERTAIN TOYS***  
18 ***AND GAMES.***

“(1) *REQUIREMENT.*—The packaging of any toy or game intended for use by children who are at least 3 years old but not older than 6 years (or such other upper age limit as the Commission may determine, which may not be less than 5 years old), any descrip-

1     *tive material which accompanies such toy or game,*  
2     *and, in the case of bulk sales of such toy or game*  
3     *when unpackaged, any bin, container for retail dis-*  
4     *play, or vending machine from which the unpackaged*  
5     *toy or game is dispensed shall bear or contain the*  
6     *cautionary statement described in paragraph (2) if*  
7     *the toy or game—*

8             *“(A) is manufactured for sale, offered for*  
9             *sale, or distributed in commerce in the United*  
10            *States, and*

11            *“(B) includes a small part, as defined by*  
12            *the Commission.*

13            *“(2) LABEL.—The cautionary statement required*  
14            *by paragraph (1) for a toy or game shall be as fol-*  
15            *lows:*

16            *“(b) BALLOONS, SMALL BALLS, AND MARBLES.—*

17            *“(1) REQUIREMENT.—In the case of any latex*  
18            *balloon, any ball with a diameter of 1.75 inches or*  
19            *less intended for children 3 years of age or older, any*  
20            *marble intended for children 3 years of age or older,*  
21            *or any toy or game which contains such a balloon,*

1     *ball, or marble, which is manufactured for sale, of-*  
2     *fered for sale, or distributed in commerce in the Unit-*  
3     *ed States—*

4             *“(A) the packaging of such balloon, ball,*  
5             *marble, toy, or game,*

6             *“(B) any descriptive material which accom-*  
7             *plishes such balloon, ball, marble, toy, or game,*  
8             *and*

9             *“(C) in the case of bulk sales of any such*  
10            *product when unpackaged, any bin, container for*  
11            *retail display, or vending machine from which*  
12            *such unpackaged balloon, ball, marble, toy, or*  
13            *game is dispensed,*  
14     *shall bear or contain the cautionary statement de-*  
15     *scribed in paragraph (2).*

16            *“(2) LABEL.—The cautionary statement required*  
17            *under paragraph (1) for a balloon, ball, marble, toy,*  
18            *or game shall be as follows:*

19            *“(A) BALLOONS.—In the case of balloons, or*  
20            *toys or games that contain latex balloons, the fol-*  
21            *lowing cautionary statement applies:*

1                   “(B) *BALLS*.—*In the case of balls, the fol-*  
2                   *lowing cautionary statement applies:*

3                   “(C) *MARBLES*.—*In the case of marbles, the*  
4                   *following cautionary statement applies:*

5                   “(D) *TOYS AND GAMES*.—*In the case of toys*  
6                   *or games containing balls, the following caution-*  
7                   *ary statement applies:*

8                   *In the case of toys or games containing marbles,*  
9                   *the following cautionary statement applies:*

1       “(c) *GENERAL LABELING REQUIREMENTS.*—

2               “(1) *IN GENERAL.*—Except as provided in para-  
3       graphs (2) and (3), any cautionary statement re-  
4       quired under subsection (a) or (b) shall be—

5               “(A) *displayed in its entirety on the prin-*  
6       *cipal display panel of the product’s package, and*  
7       *on any descriptive material which accompanies*  
8       *the product, and, in the case of bulk sales of such*  
9       *product when unpackaged, on the bin, container*  
10       *for retail display of the product, and any vend-*  
11       *ing machine from which the unpackaged product*  
12       *is dispensed, and*

13              “(B) *displayed in the English language in*  
14       *conspicuous and legible type in contrast by ty-*  
15       *pography, layout, or color with other printed*  
16       *matter on such package, descriptive materials,*  
17       *bin, container, and vending machine, and in a*  
18       *manner consistent with part 1500 of title 16,*  
19       *Code of Federal Regulations (or successor regula-*  
20       *tions thereto).*

21              “(2) *EXCEPTION FOR PRODUCTS MANUFACTURED*  
22       *OUTSIDE UNITED STATES.*—In the case of a product  
23       *manufactured outside the United States and directly*  
24       *shipped from the manufacturer to the consumer by*  
25       *United States mail or other delivery service, the ac-*

1     *companying material inside the package of the prod-*  
2     *uct may fail to bear the required statement if other*  
3     *accompanying material bears such statement.*

4             *“(3) SPECIAL RULES FOR CERTAIN PACKAGES.—*

5     *(A) A cautionary statement required by subsection (a)*  
6     *or (b) may, in lieu of display on the principal dis-*  
7     *play panel of the product’s package, be displayed on*  
8     *another panel of the package if—*

9             *“(i) the package has a principal display*  
10     *panel of 15 square inches or less and the re-*  
11     *quired statement is displayed in three or more*  
12     *languages; and*

13             *“(ii) the statement specified in subpara-*  
14     *graph (B) is displayed on the principal display*  
15     *panel and is accompanied by an arrow or other*  
16     *indicator pointing toward the place on the pack-*  
17     *age where the statement required by subsection*  
18     *(a) or (b) appears.*

19             *“(B)(i) In the case of a product to which sub-*  
20     *section (a) applies, the statement specified by this*  
21     *subparagraph is as follows:*



1           “(ii) In the case of a product to which subsection  
2           (b)(2)(A) applies, the statement specified by this sub-  
3           paragraph is as follows:

4           “(iii) In the case of a product to which sub-  
5           section (b)(2)(B) applies, the statement specified by  
6           this subparagraph is as follows:

7           “(iv) In the case of a product to which subsection  
8           (b)(2)(C) applies, the statement specified by this sub-  
9           paragraph is as follows:

10           “(v) In the case of a product to which subsection  
11           (b)(2)(D) applies, the statement specified by this sub-  
12           paragraph is as follows:

1       “(d) *TREATMENT AS MISBRANDED HAZARDOUS SUB-*  
 2 *STANCE.*—A balloon, ball, marble, toy, or game, that is not  
 3 *in compliance with the requirements of this section shall*  
 4 *be considered a misbranded hazardous substance under sec-*  
 5 *tion 2(p).”.*

6       (b) *OTHER SMALL BALLS.*—A small ball—

7           (1) *intended for children under the age of 3*  
 8 *years of age, and*

9           (2) *with a diameter of 1.75 inches or less,*  
 10 *shall be considered a banned hazardous substance under sec-*  
 11 *tion 2(q) of the Federal Hazardous Substances Act (15*  
 12 *U.S.C. 1261(q)).*

13       (c) *REGULATIONS.*—The Commission shall promulgate  
 14 *regulations, under section 553 of title 5, United States Code,*  
 15 *for the implementation of this section by July 1, 1994, or*  
 16 *the date that is 6 months after the date of enactment of*  
 17 *this Act, whichever occurs first. Subsections (f) through (i)*  
 18 *of section 3 of the Federal Hazardous Substances Act (15*  
 19 *U.S.C. 1262) shall not apply with respect to the issuance*  
 20 *of regulations under this subsection.*

21       (d) *EFFECTIVE DATE; APPLICABILITY.*—This section  
 22 *shall take effect January 1, 1995, and shall apply only to*  
 23 *products entered into commerce on or after January 1,*  
 24 *1995.*

25       (e) *PREEMPTION.*—

1           (1) *IN GENERAL.*—Subject to paragraph (2), a  
 2     State or political subdivision of a State may not es-  
 3     tablish or enforce a requirement relating to caution-  
 4     ary labeling of small parts hazards or choking haz-  
 5     ards in any toy, game, marble, small ball, or balloon  
 6     intended or suitable for use by children unless such  
 7     requirement is identical to a requirement established  
 8     by amendments made by this section to the Federal  
 9     Hazardous Substances Act.

10          (2) *EXCEPTION.*—A State or political subdivi-  
 11     sion of a State may, until January 1, 1995, enforce  
 12     a requirement described in paragraph (1) if such re-  
 13     quirement was in effect on October 2, 1993.

14     **SEC. 4. REPORTING REQUIREMENTS.**

15          (a) *REPORTS TO CONSUMER PRODUCT SAFETY COM-*  
 16     *MISSION.*—

17          (1) *REQUIREMENT TO REPORT.*—Each manufac-  
 18     turer, distributor, retailer, and importer of a marble,  
 19     small ball, or latex balloon, or a toy or game that  
 20     contains a marble, small ball, latex balloon, or other  
 21     small part, shall report to the Commission any infor-  
 22     mation obtained by such manufacturer, distributor,  
 23     retailer, or importer which reasonably supports the  
 24     conclusion that—

1           (A) an incident occurred in which a child  
2           (regardless of age) choked on such a marble,  
3           small ball, or latex balloon or on a marble, small  
4           ball, latex balloon, or other small part contained  
5           in such toy or game; and

6           (B) as a result of that incident the child  
7           died, suffered serious injury, ceased breathing for  
8           any length of time, or was treated by a medical  
9           professional.

10          (2) *TREATMENT UNDER CPSA.*—For purposes of  
11          section 19(a)(3) of the Consumer Product Safety Act  
12          (15 U.S.C. 2068(a)(3)), the requirement to report in-  
13          formation under this subsection is deemed to be a re-  
14          quirement under such Act.

15          (3) *EFFECT ON LIABILITY.*—A report by a man-  
16          ufacturer, distributor, retailer, or importer under  
17          paragraph (1) shall not be interpreted, for any pur-  
18          pose, as an admission of liability or of the truth of  
19          the information contained in the report.

20          (b) *REPORT TO CONGRESS.*—Upon written request of  
21          the Chairman or Ranking Minority Member of the Commit-  
22          tee on Commerce, Science, and Transportation of the Senate  
23          or the Committee on Energy and Commerce of the House  
24          of Representatives or any subcommittee of such committee,  
25          the Commission shall provide to the Chairman or Ranking

1 *Minority Member any information reported to the Commis-*  
 2 *sion under subsection (a) for purposes that are related to*  
 3 *the jurisdiction of such committee or subcommittee. Such*  
 4 *information shall be aggregated so as not to reveal the iden-*  
 5 *tity of the person that reported the information to the Com-*  
 6 *mission.*

7 (c) *CONFIDENTIALITY PROTECTIONS.—The confiden-*  
 8 *tiality protections of section 6(b) of the Consumer Product*  
 9 *Safety Act (15 U.S.C. 2055(b)) apply to any information*  
 10 *reported to the Commission under subsection (a) of this*  
 11 *section.*

12 **SEC. 5. BICYCLE HELMETS.**

13 (a) *IN GENERAL.—Bicycle helmets manufactured 9*  
 14 *months or more after the date of enactment of this Act shall*  
 15 *conform to—*

16 (1) *any interim standard described under sub-*  
 17 *section (b), pending the establishment of a final*  
 18 *standard pursuant to subsection (c); and*

19 (2) *the final standard, once it has been estab-*  
 20 *lished under subsection (c).*

21 (b) *INTERIM STANDARDS.—The interim standards are*  
 22 *as follows:*

23 (1) *The American National Standards Institute*  
 24 *standard designated as “Z90.4–1984”.*

1           (2) *The Snell Memorial Foundation standard*  
2           *designated as “B-90”.*

3           (3) *Any other standard that the Consumer Prod-*  
4           *uct Safety Commission determines is appropriate.*

5           (c) *FINAL STANDARD.—Not later than 60 days after*  
6           *the date of the enactment of this Act, the Consumer Product*  
7           *Safety Commission shall begin a proceeding under section*  
8           *553 of title 5, United States Code, to—*

9           (1) *review the requirements of the interim stand-*  
10          *ards set forth in subsection (a) and establish a final*  
11          *standard based on such requirements;*

12          (2) *include in the final standard a provision to*  
13          *protect against the risk of helmets coming off the*  
14          *heads of bicycle riders;*

15          (3) *include in the final standard provisions that*  
16          *address the risk of injury to children; and*

17          (4) *include additional provisions as appropriate.*  
18          *Sections 7 and 9 of the Consumer Product Safety Act (15*  
19          *U.S.C. 2056 and 2058) shall not apply to the proceeding*  
20          *under this subsection and section 11 of such Act (15 U.S.C.*  
21          *2060) shall not apply with respect to any standard issued*  
22          *under such proceeding. The final standard shall take effect*  
23          *1 year from the date it is issued.*

24          (d) *FAILURE TO MEET STANDARDS.—*

1           (1) *FAILURE TO MEET INTERIM STANDARD.—*  
2           *Until the final standard takes effect, a bicycle helmet*  
3           *that does not conform to an interim standard as re-*  
4           *quired under subsection (a)(1) shall be considered in*  
5           *violation of a consumer product safety standard pro-*  
6           *mulgated under the Consumer Product Safety Act.*

7           (2) *STATUS OF FINAL STANDARD.—The final*  
8           *standard developed under subsection (c) shall be con-*  
9           *sidered a consumer product safety standard promul-*  
10          *gated under the Consumer Product Safety Act.*

S 680 RS——2

S 680 RS——3