

110TH CONGRESS
1ST SESSION

H. R. 3691

To reauthorize and improve the Consumer Product Safety Act.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2007

Ms. DELAURO (for herself, Ms. DEGETTE, Ms. SCHAKOWSKY, Ms. SUTTON, Mr. ALLEN, Mrs. MCCARTHY of New York, Mr. HALL of New York, Mr. LARSON of Connecticut, and Mr. COURTNEY) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To reauthorize and improve the Consumer Product Safety Act.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Safety Assurance For Every Consumer Product Act” or
6 the “SAFE Consumer Product Act”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. References.
- Sec. 3. Definition of children’s product.
- Sec. 4. Product testing requirements.

Sec. 5. Product recall authority, and inspection authority.
 Sec. 6. Civil and criminal penalties.
 Sec. 7. Expedited disclosure.
 Sec. 8. Ban on children's products containing lead.
 Sec. 9. Consumer product registration forms.
 Sec. 10. Internet advertising requirement of certain children's products.
 Sec. 11. Commission procedures.
 Sec. 12. Preemption.
 Sec. 13. Authorization of Appropriations.
 Sec. 14. Reports to Congress.

1 **SEC. 2. REFERENCES.**

2 Wherever in this Act an amendment is expressed in
 3 terms of an amendment to a section or other provision,
 4 the reference shall be considered to be made to a section
 5 or other provision of the Consumer Product Safety Act
 6 (15 U.S.C. 2051 et seq.).

7 **SEC. 3. DEFINITION OF CHILDREN'S PRODUCT.**

8 As used in this Act, the term "children's product"
 9 means a toy or other article intended for use by a child
 10 under 12 years of age that is introduced into the interstate
 11 stream of commerce. In determining whether a toy or arti-
 12 cle is intended for use by a child under 12 years of age,
 13 the following factors shall be considered:

14 (1) A statement by a manufacturer about the
 15 intended use of such toy or article, including a label
 16 on such toy or article, if such statement is reason-
 17 able.

18 (2) The context and manner of the advertising,
 19 promotion, and marketing associated with the toy or
 20 article.

1 (3) Whether the toy or article is commonly rec-
2 ognized by consumers as being intended for use by
3 a child under 12 years of age.

4 (4) The Age Determination Guidelines issued
5 by the Consumer Product Safety Commission in
6 September 2002, and any subsequent version of
7 such Guidelines.

8 **SEC. 4. PRODUCT TESTING REQUIREMENTS.**

9 (a) MANDATORY AND THIRD-PARTY TESTING.—Sec-
10 tion 14(b) (15 U.S.C. 2063(b)) is amended—

11 (1) by striking “The Commission may” and in-
12 serting “(1) The Commission shall”;

13 (2) by designating the second sentence as para-
14 graph (2) and indenting the margin of such para-
15 graph, as so designated, 2 ems from the left margin;

16 (3) in paragraph (2), as so designated, by strik-
17 ing “Any test or” and inserting “Except as provided
18 in paragraph (3), any test or”; and

19 (4) by adding at the end the following:

20 “(3) In the case of a children’s product, any
21 test or testing program on the basis of which a cer-
22 tificate is issued under subsection (a)(2) shall be
23 conducted by a nongovernmental independent third
24 party qualified to perform such tests or testing pro-
25 grams.”.

1 (b) DEFINITION OF CHILDREN’S PRODUCTS AND
2 INDEPENDENT THIRD PARTY.—Section 14 (15 U.S.C.
3 2063) is amended by adding at the end the following:

4 “(d) DEFINITIONS.—In this section:

5 “(1) The term ‘children’s product’ means a toy
6 or other article intended for use by a child under 12
7 years of age that is introduced into the interstate
8 stream of commerce. In determining whether a toy
9 or article is intended for use by a child under 12
10 years of age, the following factors shall be consid-
11 ered:

12 “(A) A statement by a manufacturer about
13 the intended use of such toy or article, includ-
14 ing a label on such toy or article, if such state-
15 ment is reasonable.

16 “(B) The context and manner of the ad-
17 vertising, promotion, and marketing associated
18 with the toy or article.

19 “(C) Whether the toy or article is com-
20 monly recognized by consumers as being in-
21 tended for use by a child under 12 years of age.

22 “(D) The Age Determination Guidelines
23 issued by the Consumer Product Safety Com-
24 mission in September 2002 and any subsequent
25 version of such Guidelines.

1 “(2) The term ‘independent third party’, with
2 respect to a testing entity, means an independent
3 testing entity that is physically separate from any
4 manufacturer or private labeler whose product will
5 be tested by such entity, and is not owned, managed,
6 controlled, or directed by such manufacturer or pri-
7 vate labeler, and that is accredited in accordance
8 with an accreditation process established by the
9 Commission.”.

10 **SEC. 5. PRODUCT RECALL AUTHORITY, AND INSPECTION**
11 **AUTHORITY.**

12 (a) COMMISSION RECALL AUTHORITY.—Section 15
13 (15 U.S.C. 2064) is amended—

14 (1) by amending subsection (c) to read as fol-
15 lows:

16 “(c) On receiving notification under subsection (b) or
17 by other means, if the Commission determines that a con-
18 sumer product contains a defect which could create a sub-
19 stantial product hazard, the Commission may order the
20 manufacturer or any distributor or retailer of the product
21 to take any one or more of the following actions:

22 “(1) To cease distribution of the product.

23 “(2) To notify all persons that transport, store,
24 distribute, or otherwise handle the product, or to
25 which the product has been transported, sold, dis-

1 tributed, or otherwise handled, to cease immediately
2 distribution of the product.

3 “(3) To immediately provide notice to the pub-
4 lic of the product defect.

5 “(4) To notify appropriate State and local pub-
6 lic health officials.

7 “(5) To provide notice to all consumers to
8 whom the product was, or may have been, distrib-
9 uted.

10 “(6) To recall the product and take such fur-
11 ther action under subsection (d).”;

12 (2) in subsection (d), by striking “An order
13 under this subsection may also require” and insert-
14 ing “An order under this subsection shall also re-
15 quire”;

16 (3) by amending subsection (f) to read as fol-
17 lows:

18 “(f)(1) The Commission shall provide a person sub-
19 ject to an order under subsection (c) with an opportunity
20 for an informal hearing (in accordance with such rules or
21 regulations as the Commission shall prescribe) on—

22 “(A) the actions required by the order; and

23 “(B) any reasons why the product that is the
24 subject of the order should not be recalled or notice
25 required under such order should not be provided.

1 The Commission shall hold such hearing as soon as prac-
2 ticable, but not later than 2 business days, after the date
3 of issuance of the order under subsection (c).

4 “(2) After providing an opportunity for an informal
5 hearing under this subsection, the Commission may, as the
6 Commission determines to be necessary, amend the order
7 issued under subsection (c)—

8 “(A) to specify a timetable during which the re-
9 call shall occur; or

10 “(B) to require periodic reports to the Commis-
11 sion describing the progress of the recall.

12 “(3) If, after providing an opportunity for an infor-
13 mal hearing under this subsection, the Commission deter-
14 mines that adequate grounds do not exist to continue the
15 actions required by the order, the Commission shall vacate
16 the order.”; and

17 (4) by adding at the end the following:

18 “(h) REMEDIES NOT EXCLUSIVE.—The remedies au-
19 thorized by this section shall be in addition to any other
20 remedies that may be available.”.

21 (b) RETAIL SALE OF RECALLED PRODUCT PROHIB-
22 ITED.—Section 19(a) (15 U.S.C. 2068(a)) is amended—

23 (1) in paragraph (7), by striking “; or” and in-
24 serting a semicolon;

1 (2) in paragraph (8), by striking “; or” and in-
2 serting a semicolon;

3 (3) in paragraph (9), by striking the period and
4 inserting a semicolon;

5 (4) in paragraph (10), by striking the period
6 and inserting “; or”; and

7 (5) by adding at the end the following:

8 “(11) to sell any consumer product at retail if
9 such person knows that such product is the subject
10 of a recall order issued by the manufacturer, the
11 Commission, or a court.”.

12 (c) AUTHORITY OF COMMISSION TO INSPECT RE-
13 TAILERS.—Section 16(a)(1) (15 U.S.C. 2065(a)(1)) is
14 amended—

15 (1) by inserting “, retail store” after “ware-
16 house”; and

17 (2) by striking “or held” and inserting “held,
18 or sold”.

19 (d) TRACKING LABELS FOR CHILDREN’S PROD-
20 UCTS.—Section 14 (15 U.S.C. 2063) is further amended
21 by adding at the end thereof the following:

22 “(e) The manufacturer of a children’s product or
23 other consumer product (as may be required by the Com-
24 mission in its discretion after a rulemaking proceeding)
25 shall place distinguishing marks on the product or its

1 packaging that will enable the ultimate purchaser to ascer-
2 tain the source, date, and cohort (including the batch, run
3 number, or other identifying characteristic) of production
4 of the product by reference to those marks.”.

5 **SEC. 6. CIVIL AND CRIMINAL PENALTIES.**

6 (a) CIVIL PENALTIES.—

7 (1) MAXIMUM PENALTY DETERMINED BY THE
8 COMMISSION.—Section 20(a)(1) (15 U.S.C.
9 2069(a)(1)) is amended by striking “, except that
10 the maximum civil penalty shall not exceed
11 \$1,250,000 for any related series of violations.” and
12 inserting “. The maximum civil penalty for any re-
13 lated series of violations shall be determined by the
14 Commission taking into consideration the factors de-
15 scribed in subsection (b).”.

16 (2) FACTORS TO BE CONSIDERED.—Section
17 20(b) (15 U.S.C. 2069(b)) is amended by inserting
18 “, among other factors,” after “shall consider”.

19 (b) CRIMINAL PENALTIES.—Section 21 (15 U.S.C.
20 2070) is amended—

21 (1) in subsection (a), by striking “after having
22 received notice of noncompliance from the Commis-
23 sion”; and

1 (2) in subsection (b), by striking “and who has
2 knowledge of notice of noncompliance received by the
3 corporation from the Commission,”.

4 **SEC. 7. EXPEDITED DISCLOSURE.**

5 (a) REDUCED PERIOD OF NOTICE TO MANUFACTUR-
6 ERS AND PRIVATE LABELERS PRIOR TO PUBLIC DISCLO-
7 SURE.—Section 6(b) (15 U.S.C. 2055(b)) is amended in
8 the first sentence, by striking “30 days” and inserting “10
9 days”.

10 (b) WEBSITE NOTICE REQUIREMENT.—Section 15
11 (15 U.S.C. 2064) is further amended by adding at the
12 end the following:

13 “(k) WEBSITE NOTICE.—Any person required to give
14 public notice under this section, or subject to an order
15 issued under subsection (c) or (d) shall post, in a promi-
16 nent location on such person’s Internet website (if such
17 person maintains an Internet website), a notice regarding
18 the product or product that is the subject of such an
19 order.”.

20 **SEC. 8. BAN ON CHILDREN’S PRODUCTS CONTAINING LEAD.**

21 (a) BANNED HAZARDOUS SUBSTANCES.—Effective 6
22 months after the date of enactment of this Act, any chil-
23 dren’s product containing more than 40 parts per million
24 lead shall be a banned hazardous substance within the

1 meaning of section 2(q)(1) of the Federal Hazardous Sub-
2 stances Act (15 U.S.C. 1261(q)(1)).

3 (b) CERTAIN ELECTRONIC DEVICES.—If the Con-
4 sumer Product Safety Commission determines that it is
5 not feasible for certain electronic devices to comply with
6 such regulations at the time the regulations shall take ef-
7 fect, the Commission shall, by regulation—

8 (1) issue standards to reduce the exposure of
9 and accessibility to lead in such electronic devices;
10 and

11 (2) establish a schedule by which such elec-
12 tronic devices shall be in full compliance with the
13 regulations prescribed under subsection (a).

14 **SEC. 9. CONSUMER PRODUCT REGISTRATION FORMS.**

15 (a) AUTHORITY TO REQUIRE.—Not later than 270
16 days after the date of enactment of this Act, the Consumer
17 Product Safety Commission shall, pursuant to its author-
18 ity under section 16(b) of the Consumer Product Safety
19 Act (15 U.S.C. 2065(b)), promulgate a consumer product
20 safety rule to require manufacturers of any children’s
21 product that is subject to a consumer product safety
22 standard or voluntary consumer product safety stand-
23 ard—

24 (1) to provide consumers with a postage-paid
25 consumer registration form with each such product;

1 (2) to maintain a record of the names, address-
2 es, e-mail addresses, and other contact information
3 of consumers who register their ownership of such
4 products with the manufacturer in order to improve
5 the effectiveness of manufacturer campaigns to re-
6 call such products; and

7 (3) to permanently place the manufacturer
8 name and contact information, model name and
9 number, and the date of manufacture on each such
10 product.

11 The Commission may, by rule, extend the registration re-
12 quirement under this subsection to consumer products
13 other than children's products that are subject to a con-
14 sumer product safety rule or voluntary standard.

15 (b) REQUIREMENTS FOR REGISTRATION FORM.—For
16 any case in which the Commission requires product reg-
17 istration forms under subsection (a), such forms shall—

18 (1) include spaces for a consumer to provide
19 their name, address, telephone number, and e-mail
20 address;

21 (2) include space sufficiently large to permit
22 easy, legible recording of all desired information;

23 (3) be attached to the surface of each product
24 so that, as a practical matter, the consumer must

1 notice and handle the form after purchasing the
2 product;

3 (4) include the manufacturer's name, model
4 name and number for the product, and the date of
5 manufacture;

6 (5) include a message explaining the purpose of
7 the registration and designed to encourage con-
8 sumers to complete the registration;

9 (6) include an option for consumers to register
10 through the Internet; and

11 (7) include a statement that information pro-
12 vided by the consumer shall not be used for any pur-
13 pose other than to facilitate a recall of or safety
14 alert regarding that product.

15 In issuing regulations under this section, the Commission
16 may prescribe the exact text and format of the required
17 registration form.

18 (c) RECORD KEEPING AND NOTIFICATION REQUIRE-
19 MENTS.—Any rule promulgated under subsection (a) shall
20 require each manufacturer to maintain a record of reg-
21 istrants for each product manufactured that includes all
22 of the information provided by each consumer registered,
23 and to use such information to notify such consumers in
24 the event of a voluntary or involuntary recall of or safety
25 alert regarding such product. Each manufacturer shall

1 maintain such a record for a period of not less than 6
2 years after the date of manufacture of the product. Con-
3 sumer information collected by a manufacturer under this
4 Act may not be used by the manufacturer, nor dissemi-
5 nated by such manufacturer to any other party, for any
6 purpose other than notification to such consumer in the
7 event of a product recall or safety alert.

8 (d) STUDY.—The Commission shall conduct a study
9 at such time as it considers appropriate on the effective-
10 ness of the consumer registration forms in facilitating
11 product recalls. Not later than 4 years after the date of
12 enactment of this Act, the Commission shall report its
13 findings to Congress.

14 **SEC. 10. INTERNET ADVERTISING REQUIREMENT OF CER-**
15 **TAIN CHILDREN'S PRODUCTS.**

16 (a) REQUIREMENT.—Effective 3 months after the
17 date of enactment of this Act, any Internet advertisement
18 for a children's product that is required by a consumer
19 product safety rule to carry a warning label shall include
20 such warning label in a clear and conspicuous location on
21 such Internet advertisement.

22 (b) ENFORCEMENT AS CONSUMER PRODUCT SAFETY
23 RULE.—A violation of subsection (a) shall be treated as
24 a violation of a consumer product safety rule promulgated

1 under section 7 of the Consumer Product Safety Act (15
2 U.S.C. 2056).

3 **SEC. 11. COMMISSION PROCEDURES.**

4 (a) REPEAL OF QUORUM REQUIREMENT FOR COM-
5 MISSION ACTION.—Section 4(d) (15 U.S.C. 2053(d)) is
6 amended by striking “, but three” and all that follows
7 through “to decline to two” and inserting “if an action
8 by the Commission is necessary in the public interest and
9 the Commission transmits to Congress its reasons for such
10 an action”.

11 (b) NOTICE OF RULEMAKING.—Section 9(a) (15
12 U.S.C. 2058(a)) is amended by inserting “or notice of pro-
13 posed rulemaking” after “advanced notice of proposed
14 rulemaking”.

15 (c) SENSE OF CONGRESS REGARDING COMMISSION
16 VACANCIES.—It is the sense of Congress that—

17 (1) in order for the Consumer Product Safety
18 Commission to function effectively and carry out the
19 purposes for which the Consumer Product Safety
20 Act was enacted, it is necessary for the full com-
21 plement of 5 members of the Commission to serve
22 and participate in the business of the Commission;
23 and

1 (2) the President should nominate members to
2 fill any vacancy in the membership of the Commis-
3 sion as expeditiously as practicable.

4 **SEC. 12. PREEMPTION.**

5 Section 26 (15 U.S.C. 2075) is amended—

6 (1) in subsection (a), by striking “Whenever”
7 and inserting “Except as provided in subsections (c)
8 and (d), whenever”; and

9 (2) by adding at the end thereof the following:

10 “(d) No consumer product safety standard promul-
11 gated by the Commission after the date of enactment of
12 the Safety Assurance for Every Consumer Product Act,
13 or any other action taken by the Commission after that
14 date, shall contain a preemption provision which affects
15 any action for damages or the liability of any person for
16 damages under the statutory law or the common law of
17 any State, unless such provision is expressly authorized
18 by statute.”.

19 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

20 Section 32(a) (15 U.S.C. 2081(a)) is amended by
21 striking paragraphs (1) and (2) and inserting the fol-
22 lowing:

23 “(1) \$75,600,000 for fiscal year 2008;

24 “(2) \$87,950,000 for fiscal year 2009;

25 “(3) \$100,300,000 for fiscal year 2010;

1 “(4) \$112,650,000 for fiscal year 2011; and

2 “(5) \$125,000,000 for fiscal year 2012.”.

3 **SEC. 14. REPORTS TO CONGRESS.**

4 Not later than 1 year after the date of enactment
5 of this Act and each year thereafter, the Consumer Prod-
6 uct Safety Commission shall transmit a report to Congress
7 that contains the following:

8 (1) A description of actions taken by the Com-
9 mission with regard to consumer products not in
10 conformity with consumer product safety standards
11 or voluntary standards recognized by the Commis-
12 sion.

13 (2) A description of consumer products that
14 were the subject of a recall during the preceding
15 year, including the number and type of products.

16 (3) An analysis of the effectiveness of the ef-
17 forts to recall consumer products conducted by the
18 Commission or by a manufacturer during the pre-
19 ceding year, including the number of products sub-
20 ject to the recall that were returned to the manufac-
21 turer.

○