

CHILDREN'S GASOLINE BURN PREVENTION ACT

OCTOBER 9, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 814]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 814) to require the Consumer Product Safety Commission to issue regulations mandating child-resistant closures on all portable gasoline containers, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Children’s Gasoline Burn Prevention Act”.

SEC. 2. CHILD-RESISTANT PORTABLE GASOLINE CONTAINERS.

(a) **CONSUMER PRODUCT SAFETY RULE.**—The provision of subsection (b) shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

(b) **REQUIREMENTS.**—Effective 6 months after the date of enactment of this Act, each portable gasoline container manufactured on or after that date for sale in the United States shall conform to the child-resistance requirements for closures on portable gasoline containers specified in the standard ASTM F2517–05, issued by ASTM International.

(c) **DEFINITION.**—As used in this Act, the term “portable gasoline container” means any portable gasoline container intended for use by consumers.

(d) **REVISION OF RULE.**—If, after the enactment of this Act, ASTM International proposes to revise the child resistance requirements of ASTM F2517–05, ASTM International shall notify the Consumer Product Safety Commission of the proposed revision and the proposed revision shall be incorporated in the consumer product safety rule under subsection (a) unless, within 60 days of such notice, the Commission notifies ASTM International that the Commission has determined that such revision does not carry out the purposes of subsection (b).

(e) **IMPLEMENTING REGULATIONS.**—Section 553 of title 5, United States Code, shall apply with respect to the issuance of any regulations by the Consumer Product Safety Commission to implement the requirements of this section, and sections 7 and 9 of the Consumer Product Safety Act shall not apply to such issuance.

(f) **REPORT.**—Not later than 2 years after the date of enactment of this Act, the Consumer Product Safety Commission shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on—

- (1) the degree of industry compliance with the standard promulgated under subsection (a);
- (2) any enforcement actions brought by the Commission to enforce such standard; and
- (3) incidents involving children interacting with portable gasoline containers (including both those that are and are not in compliance with the standard promulgated under subsection (a)).

PURPOSE AND SUMMARY

The purpose of H.R. 814, the Children’s Gasoline Burn Prevention Act, is to enhance the protection of children from death or serious injury from burn hazards. H.R. 814 requires the same child-resistant caps for all gasoline containers, whether sold with or without gasoline. Although certain State environmental emission and spill control laws as well as voluntary child resistance standards have been adopted more recently, current Federal law requires such caps only on such containers sold with gasoline in them at time of sale. H.R. 814 thus requires the Consumer Product Safety Commission (CPSC) to issue regulations mandating child-resistant closures on all portable gasoline containers, and provides that any revisions to the applicable child resistance requirements proposed by ASTM International shall be incorporated in the consumer product safety rule. H.R. 814 also requires the CPSC to report to Congress two years after enactment of the legislation on compliance by industry, agency enforcement actions, and any reported incidents involving children and portable gasoline cans.

BACKGROUND AND NEED FOR LEGISLATION

Gasoline in cans not secured with child-resistant caps can pose a serious danger if small children gain access to them. CPSC data estimate that in a single year, over 1,200 children under the age of 5 were treated in emergency rooms for injuries related to gaso-

line, either through fire, ingestion, or inhalation of fumes. Other CPSC data confirm that, over an 11-year period, there were 33 cases which involved a child under the age of 5 gaining access to a gas can. Nineteen of these resulted in deaths.

The Poison Packaging Prevention Act of 1973 (PPPA) requires items containing dangerous or poisonous materials, such as drug containers, to be sold with child-resistant caps. The PPPA does not, however, apply to portable gasoline cans because the cans are sold empty, even though the cans are designed for the purpose of containing gasoline, a flammable substance. This legislation is intended to require that all gasoline cans, whether sold full or empty of gasoline, will be required to have the same child-resistant caps.

HEARINGS

The Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on Tuesday, May 15, 2007, entitled "Protecting Our Children: Current Issues in Consumer Product Safety," which examined the performance of the CPSC in safeguarding consumers, particularly children, from hazardous products. Testimony was received from the Honorable Nancy A. Nord, Acting CPSC Chairman; Mr. Alan Korn, Public Policy Director and General Counsel, Safe Kids Worldwide; Ms. Rachel Weintraub, Director of Product Safety and Senior Counsel, Consumer Federation of America; Mr. Frederick Locker, General Counsel, Toy Industry Association; Dr. Marla Felcher, Adjunct Lecturer, Kennedy School of Government, Harvard University; Mr. James A. Thomas, President, ASTM International; and Ms. Nancy A. Cowles, Executive Director, Kids in Danger.

The Subcommittee also held a legislative hearing on Wednesday, June 6, 2007, entitled "Legislation to Improve Consumer Product Safety for Children: H.R. 2474, H.R. 1699, H.R. 814, and H.R. 1721." Testimony was received from Mr. Edmund Mierzwinski, Consumer Program Director, United States Public Interest Research Group and Ms. Sally Greenberg, Senior Product Safety Counsel, Consumers Union.

COMMITTEE CONSIDERATION

On Tuesday, July 31, 2007, the Subcommittee on Commerce, Trade, and Consumer Protection met in open markup session and favorably forwarded H.R. 814, amended, to the full Committee for consideration, by a voice vote. On Tuesday, September 25, 2007, the full Committee met in open markup session and ordered H.R. 814 favorably reported to the House, as amended, by a voice vote, a quorum being present. No amendments were offered during full Committee consideration.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken during consideration of H.R. 814 or in ordering the bill reported. A motion by Mr. Dingell to order H.R. 814 favorably reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings of the Committee are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of the legislation is to reduce the harm to individuals, particularly children, by requiring child-resistant closures on all portable gasoline containers.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 814 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 814 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee will adopt as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Regarding clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate on H.R. 814 by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available as of the time of the filing of this report by the Committee.

FEDERAL MANDATES STATEMENT

The Committee will adopt as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the bill as the “Children’s Gasoline Burn Prevention Act”.

Section 2. Child-resistant portable gasoline containers

Section 2(a) provides that the mandated standard for portable gasoline containers under this legislation shall be considered to be a consumer product safety rule issued by the CPSC pursuant to Section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

Section 2(b) mandates that, six months after the date of enactment of this legislation, all portable gasoline containers manufactured for sale in the United States shall conform to the child-resistant standard specified in the “standard ASTM F2517–05,” issued by ASTM International (ASTM), a private standard-setting organization.

Additionally, Section 2(b) eliminates Section 9(a)–(f) of the CPSA for the purpose of adopting a final safety rule pertaining to portable gasoline containers. The effect of this provision would eliminate the current procedural requirement of issuing an advance notice of proposed rulemaking (“ANPR”) and notice of proposed rulemaking (“NPR”) and potentially permit the CPSC to adopt a final rule without the Administrative Procedures Act requirement of providing the public with prior notice and an opportunity to submit comments on the proposed rule. This bill would also eliminate the required findings that the Commission currently must make in the ANPR and NPR rulemaking stages. The bill would also eliminate findings required in the Final Rule stage, such as a final cost-benefit regulatory analysis, a description of any alternatives to the final rule considered by the Commission, a summary of any significant issues raised by comments submitted during the public comment period, a determination that the rule is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, and a determination that the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated. Section 2(b) would also eliminate the requirement of the Commission to rely upon a voluntary standard when the voluntary standard adequately addresses the risk of injury and there is likely to be substantial compliance with it. Other statutory requirements, however, such as those of the Regulatory Flexibility Act, Congressional Review Act, and National Environmental Policy Act, would continue to apply to the rulemaking.

While the Committee has serious concerns about removing the important requirements of Section 9 of the CPSA, this child-resistant gasoline container cap standard has been recognized as extremely effective. In the interest of protecting children from poten-

tial harm, the Committee believes that the removal of these requirements is in the public interest in this instance.

Section 2(c) defines “portable gasoline container” as any portable gasoline container intended for use by consumers.

Section 2(d) provides that, in the event that ASTM proposes in the future to revise the child resistance requirements of ASTM F2517–05, ASTM is required to notify the CPSC. The CPSC then has 60 days to consider the proposed change. If the CPSC does not affirmatively notify ASTM that the proposed change does not meet requirements for protecting the public safety, the revised standard will replace the standard set forth in this legislation and be considered a consumer product safety rule under section 9.

Section 2(e) provides that, in the event that the CPSC believes that there is a need to promulgate implementing regulations to carry out the purposes of this legislation, it may do so pursuant to the requirements of the Administrative Procedure Act, 5 U.S.C. 553. It need not follow the procedures set forth in sections 7 and 9 of the CPSA. Thus, any implementing regulations would take place in a two-part proceeding instead of the three-part proceeding required under sections 7 and 9. The bill does not anticipate, however, that implementing regulations should be necessary. The new standard thus may take effect one year after enactment without any further action by the CPSC.

Section 2(f) requires, no later than two years after the date of enactment of this legislation, the CPSC to submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. The report must discuss industry compliance with the new standard, CPSC enforcement actions, and incidents involving children interacting with portable gasoline cans, whether or not such cans are in compliance with the required standard.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

