

116TH CONGRESS
1ST SESSION

H. R. 5097

To require greater notification to the public regarding product recalls, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 2019

Ms. MENG (for herself, Mr. HASTINGS, Ms. NORTON, Mr. NADLER, Ms. TLAIB, Mr. CISNEROS, and Ms. ESCOBAR) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To require greater notification to the public regarding product recalls, 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; FINDINGS.**

4 This Act may be cited as the “Total Recall Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) The safety of the consumers in the United
8 States relies on the effectiveness of a company’s out-
9 reach.

1 (2) There are at least 400 products recalled
2 each year by the Consumer Product Safety Commis-
3 sion.

4 (3) According to the Consumer Product Safety
5 Commission, the average response rate of consumers
6 for most product recalls is between 4 and 18 per-
7 cent.

8 **SEC. 3. INCREASED NOTIFICATION ABOUT RECALLS BY**
9 **COMPANIES PARTICIPATING IN RECALLS.**

10 (a) MANDATING PUBLIC NOTICE AND INCLUDING
11 IMPORTERS.—Section 15(d)(1) of the Consumer Product
12 Safety Act (15 U.S.C. 2064(d)(1)) is amended—

13 (1) by striking “may order” and inserting
14 “shall order”;

15 (2) by striking “any distributor” and inserting
16 “any distributor, importer,”; and

17 (3) by striking “by subsection (c) and” and in-
18 serting the following: “by subsection (c), and may
19 order the manufacturer or any distributor, importer,
20 or retailer of such product”.

21 (b) NOTIFICATION REQUIREMENTS.—

22 (1) REQUIREMENTS.—Section 15(d) of such
23 Act (15 U.S.C. 2064(d)) is further amended—

24 (A) by redesignating paragraph (3) as
25 paragraph (4);

1 (B) by inserting after paragraph (2) the
2 following new paragraph:

3 “(3) The Commission may not approve an action plan
4 submitted pursuant to paragraph (2) unless such action
5 plan provides that the person submitting the action plan
6 has performed or will perform the following:

7 “(A) Not later than the expiration of the 365-
8 day period starting on the date the Commission ap-
9 proves the action plan, spending on advertising the
10 recall of the product subject to the order, using
11 methods including those determined by the Commis-
12 sion for conducting recalls, an amount equal to the
13 greater of—

14 “(i)(I) at least 25 percent of the dollar
15 amount spent by such person in the 12-month
16 period during which such person spent the
17 greatest amount on traditional marketing (not
18 including marketing through the Internet) of
19 the product; plus

20 “(II) at least the total dollar amount spent
21 by such person marketing the product through
22 the Internet; or

23 “(ii) if the product was part of a product
24 bundle, at least 5 percent of the dollar amount
25 spent by such person marketing the subscrip-

1 tion service under which the product bundle was
2 sold.

3 “(B) Submitting to the Commission such evi-
4 dence the Commission determines adequate to show
5 that such person has complied with the requirements
6 in subparagraph (A).

7 “(C) Posting in a clear and conspicuous man-
8 ner the notice required by paragraph (1) on any
9 Internet website maintained by such person until the
10 participation rate in the recall that is the subject of
11 the notice is at least 95 percent.

12 “(D) Posting to each social media account
13 maintained by such person the notice required by
14 paragraph (1), or a description of such notice and
15 a link to such notice, at least 5 times each calendar
16 month for the 12 months after the Commission has
17 approved the action plan.”; and

18 (C) by adding at the end the following new
19 paragraph:

20 “(5) In this subsection, the term ‘product bundle’
21 means a single product comprised of two or more products
22 that is sold to consumers under a subscription service that
23 does not permit the consumer to select every product com-
24 prising the single product.”.

1 (2) TOLLING OF EXPENDITURES.—Paragraph
2 (4) of section 15(d) of such Act (15 U.S.C. 2064(d))
3 (as redesignated by section 3(b)(1)(A) of this Act)
4 is amended by adding at the end the following new
5 subparagraph:

6 “(D) If the Commission revokes its approval of the
7 action plan, the running of the 365-day period in para-
8 graph (3)(A) shall be tolled. If the Commission approves
9 an alternative action plan to the action plan for which ap-
10 proval was revoked, the time period for completing the ex-
11 penditures as required by paragraph (3)(A) for such alter-
12 native action plan shall not exceed the number of days
13 that did not elapse under such 365-day period.”.

14 (c) NOTIFICATION REQUIREMENTS APPLY TO SET-
15 TLEMENT OFFERS.—Section 15(f) of such Act (15 U.S.C.
16 2064(f)) is amended—

17 (1) in paragraph (1)—

18 (A) by striking “Any settlement” and in-
19 serting “Subject to paragraph (2), any settle-
20 ment”; and

21 (B) by striking “unless the settlement
22 offer is clearly frivolous or duplicative of offers
23 previously made”;

24 (2) by redesignating paragraph (2) as para-
25 graph (4); and

1 (3) by inserting after paragraph (1) the fol-
2 lowing new paragraphs:

3 “(2) A settlement offer described in paragraph (1)
4 may not be transmitted if such offer—

5 “(A) is clearly frivolous;

6 “(B) is duplicative of offers previously made; or

7 “(C) does not obligate the manufacturer, dis-
8 tributor, importer, or retailer that is a party to such
9 offer to perform the actions in subparagraphs (A)
10 and (B) of subsection (k)(1).

11 “(3) At the outset of a hearing under this subsection,
12 the Commission shall recommend that a manufacturer,
13 distributor, importer, or retailer that is or becomes a party
14 to a settlement offer perform the actions described in sub-
15 section (d)(3)(A).”.

16 (d) VOLUNTARY CORRECTIVE ACTION NOTIFICA-
17 TION.—Section 15 of such Act (15 U.S.C. 2064) is
18 amended by adding at the end the following new sub-
19 section:

20 “(k) VOLUNTARY CORRECTIVE ACTION.—

21 “(1) REQUIREMENTS.—Any voluntary correc-
22 tive action taken by a manufacturer, distributor, im-
23 porter, or retailer in consultation with the Commis-
24 sion relating to a product described in subsection (b)
25 may be determined by the Commission as a suffi-

1 cient remedial measure only if, as part of such vol-
2 untary corrective action—

3 “(A) such manufacturer, distributor, im-
4 porter, or retailer provides the notice required
5 by subsection (c); and

6 “(B) such notice is posted in the manner
7 required by subparagraphs (C) and (D) of sub-
8 section (d)(3).

9 “(2) RECOMMENDATIONS.—When a manufac-
10 turer, distributor, importer, or retailer informs the
11 Commission that it will take voluntary corrective ac-
12 tion in consultation with the Commission, the Com-
13 mission shall recommend that such manufacturer,
14 distributor, importer, or retailer perform the actions
15 described in subsection (d)(3)(A) as part of the vol-
16 untary corrective action.”.

17 **SEC. 4. APPLICABILITY.**

18 (a) ACTION PLANS AND SETTLEMENT OFFERS.—
19 The amendments made by subsections (a) through (c) of
20 section 2 shall only apply to action plans and settlement
21 offers resulting from hearings under 15(d) of the Con-
22 sumer Product Safety Act (15 U.S.C. 2064(d)) initiated
23 on or after the date of the enactment of this Act.

24 (b) VOLUNTARY CORRECTIVE ACTION.—The amend-
25 ments made by section 2(d) shall only apply to voluntary

1 corrective actions about which the Consumer Product
2 Safety Commission is initially informed on or after the
3 date of the enactment of this Act.

4 **SEC. 5. RECALL PARTICIPATION RATES REPORTED TO**
5 **CONGRESS.**

6 (a) REPORT TO CONGRESS.—Section 27(j) of the
7 Consumer Product Safety Act (15 U.S.C. 2076(j)) is
8 amended—

9 (1) in the matter preceding paragraph (1), by
10 inserting after “and the Congress” the following: “,
11 and shall make publicly available on its website,”;

12 (2) in paragraph (12)(F), by striking “and” at
13 the end;

14 (3) by redesignating paragraph (13) as para-
15 graph (14); and

16 (4) by inserting after paragraph (12) the fol-
17 lowing new paragraph:

18 “(13) for each recall initiated or ongoing during
19 the reporting period that is pursuant to an order
20 under section 15(d), a settlement agreement, or a
21 voluntary corrective action taken in consultation
22 with the Commission—

23 “(A) the number of products subject to the
24 recall sold;

1 “(B) the number of such products for
2 which a consumer has received a remedy;

3 “(C) the number of consumers to whom a
4 direct notification has been made; and

5 “(D) the number of incidences of injuries
6 resulting from a product subject to the recall
7 occurring after the initiation of the recall that
8 are reported to the Commission; and”.

9 (b) **EFFECTIVE DATE.**—The amendments made by
10 this section shall apply on the first day of the first fiscal
11 year which begins after the date of the enactment of this
12 Act.

13 **SEC. 6. DIRECT NOTIFICATION DEFINED.**

14 Section 3(a) of the Consumer Product Safety Act (15
15 U.S.C. 2052(a)) is amended—

16 (1) by redesignating paragraphs (7) through
17 (17) as paragraphs (8) through (18), respectively;
18 and

19 (2) by inserting after paragraph (6) the fol-
20 lowing new paragraph:

21 “(7) **DIRECT NOTIFICATION.**—The term ‘direct
22 notification’ means notification by phone, email, or
23 mail.”.

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