

PRODUCT SAFETY CIVIL PENALTIES IMPROVEMENT 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. 2474]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2474) to provide for an increased maximum civil penalty for violations under the Consumer Product Safety Act, 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 “Product Safety Civil Penalties Improvement Act”.

**SEC. 2. MAXIMUM CIVIL PENALTIES OF THE CONSUMER PRODUCT SAFETY COMMISSION.****(a) INITIAL INCREASE IN MAXIMUM CIVIL PENALTIES.—**

(1) **TEMPORARY INCREASE.**—Notwithstanding the dollar amounts specified for maximum civil penalties specified in section 20(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2069(a)(1)), section 5(c)(1) of the Federal Hazardous Substances Act, and section 5(e)(1) of the Flammable Fabrics Act (15 U.S.C. 1194(e)(1)), the maximum civil penalties for any violation specified in such sections shall be \$5,000,000, beginning on the date that is the earlier of the date on which final regulations are issued under section 3(b) or 360 days after the date of enactment of this Act.

(2) **EFFECTIVE DATE.**—Paragraph (1) shall cease to be in effect on the date on which the amendments made by subsection (b)(1) shall take effect.

**(b) PERMANENT INCREASE IN MAXIMUM CIVIL PENALTIES.—****(1) AMENDMENTS.—**

(A) **CONSUMER PRODUCT SAFETY ACT.**—Section 20(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2069(a)(1)) is amended by striking “\$1,250,000” both places it appears and inserting “\$10,000,000”.

(B) **FEDERAL HAZARDOUS SUBSTANCES ACT.**—Section 5(c)(1) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)(1)) is amended by striking “\$1,250,000” both places it appears and inserting “\$10,000,000”.

(C) **FLAMMABLE FABRICS ACT.**—Section 5(e)(1) of the Flammable Fabrics Act (15 U.S.C. 1194(e)(1)) is amended by striking “\$1,250,000” and inserting “\$10,000,000”.

(2) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall take effect on the date that is 1 year after the earlier of—

(A) the date on which final regulations are issued pursuant to section 3(b); or

(B) 360 days after the date of enactment of this Act.

**SEC. 3. DETERMINATION OF PENALTIES BY THE CONSUMER PRODUCT SAFETY COMMISSION.****(a) FACTORS TO BE CONSIDERED.—**

(1) **CONSUMER PRODUCT SAFETY ACT.**—Section 20(b) of the Consumer Product Safety Act (15 U.S.C. 2069(b)) is amended—

(A) by inserting “the nature, circumstances, extent, and gravity of the violation, including” after “shall consider”;

(B) by striking “products distributed, and” and inserting “products distributed,”; and

(C) by inserting “, and such other factors as appropriate” before the period.

(2) **FEDERAL HAZARDOUS SUBSTANCES ACT.**—Section 5(c)(3) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)(3)) is amended—

(A) by inserting “the nature, circumstances, extent, and gravity of the violation, including” after “shall consider”;

(B) by striking “substance distributed, and” and inserting “substance distributed,”; and

(C) by inserting “, and such other factors as appropriate” before the period.

(3) **FLAMMABLE FABRICS ACT.**—Section 5(e)(2) of the Flammable Fabrics Act (15 U.S.C. 1194(e)(2)) is amended—

(A) by striking “nature and number” and inserting “nature, circumstances, extent, and gravity”;

(B) by striking “absence of injury, and” and inserting “absence of injury,”; and

(C) by inserting “, and such other factors as appropriate” before the period.

(b) **REGULATIONS.**—Not later than 1 year after the date of enactment of this Act, and in accordance with the procedures of section 553 of title 5, United States Code, the Commission shall issue a final regulation providing its interpretation of the penalty factors described in section 20(b) of the Consumer Product Safety Act (15 U.S.C. 2069(b)), section 5(c)(3) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)(3)), and section 5(e)(2) of the Flammable Fabrics Act (15 U.S.C. 1194(e)(2)), as amended by subsection (a).

## PURPOSE AND SUMMARY

The purpose of H.R. 2474 is to enhance the ability of the Consumer Product Safety Commission (CPSC) to protect the American public from serious injury or death as a result of hazardous products under the agency's jurisdiction. H.R. 2474 would amend the Consumer Product Safety Act, the Flammable Fabrics Act, and the Federal Hazardous Substances Act to increase the cap on civil penalties that the CPSC may assess for knowing product safety violations from the current level of \$1.825 million to \$10 million. This increase would be phased in over a two-year period. H.R. 2474 also would expand the factors that the CPSC must consider in assessing the amount of such penalty, including whether a violator is a recidivist or a first-time offender.

## BACKGROUND AND NEED FOR LEGISLATION

The CPSC can impose civil penalties on manufacturers, distributors, and retailers for knowing violations of the Consumer Product Safety Act (CPSA). The current statutory cap on total civil penalties is \$1.825 million. The original statutory maximum was \$500,000 and dates back to the original passage of CPSA in 1973. Section 20 of the Act was amended in 1990, setting the limit at \$1.25 million and building in escalators to account for inflation. As such, the cap on civil penalties has been increased a total of \$1.325 million over the past 34 years.

As a result, the cost of civil penalties may be outweighed by the cost of compliance with the prohibitions (and requirements) of the CPSA. For many large companies, a civil penalty of \$1.825 million is a relatively small amount, and thus does not always provide sufficient incentive for companies to report problems to the Commission. For instance, the \$750,000 fine that was assessed by the CPSC against Wal-Mart for failing to report a defect in fitness machines represented 1 minute, 33 seconds worth of sales for the retail giant.

Section 15(b) of the CPSA requires every manufacturer, distributor, or retailer of a consumer product distributed in commerce to notify the CPSC immediately upon obtaining information that reasonably supports the conclusion that a given product (1) violates a safety standard promulgated by CPSC, (2) contains a defect that could pose a substantial hazard, or (3) otherwise creates an unreasonable risk of serious injury or death. Enforcing the requirement for companies to self-report within 24 hours is a challenge for this small agency, which has limited resources and is only authorized to levy fines of less than \$2 million, even in egregious cases. Most companies behave responsibly, and the CPSC has indicated that the number of reports it receives has increased in recent years. One witness, however, raised concerns about whether product hazards are adequately reported and scofflaws are punished. See testimony of Dr. E. Marla Felcher, Kennedy School of Government, Harvard University, and her paper, "The U.S. Consumer Product Safety Commission: The Paper Tiger of American Product Safety," April 3, 2002.

Lack of reporting is particularly disturbing when it comes to children's products. In July of 2006, Tiffany & Co. agreed to pay a \$262,500 civil penalty to settle allegations that the company failed

to report to the Government in a timely manner a hazard created by its infant teether rattles. Tiffany had received reports of defective solder joints during the period of November 2003 to February 2004, but failed to notify consumers who had purchased the teethers, nor did the company report the defects to the CPSC until after the Commission launched its own investigation.

According to CPSC records and press reports, "Safety Agency, Mattel Clash Over Disclosures," *Wall Street Journal*, Tuesday, September 4, 2007, Mattel was fined \$1.1 million in 2001 for failing to promptly report a fire hazard involving its Power Wheels line of motorized minicars, designed to be ridden by children as young as two years old. Ten million of the cars had to be pulled from the market in 1998. The CPSC's investigation found that there were reports of 116 fires involving the minicars and more than 10 times as many reports of electrical components overheating, melting, short-circuiting, or failing. In another case involving Mattel, its subsidiary, Fisher-Price, received 10 reports between September and November of 2002 regarding a swallowing hazard posed by a nail fastener that could separate from the toy in its popular Little People Animal Sounds Farm. Fisher-Price received two reports by February 2003 of parents concerned the problem posed a choking hazard and a report of a December 2002 case, where a nail fastener punctured the lung of a 14-month-old baby who had inhaled it. Fisher-Price did not report the safety hazard until March 2003, after it had received 32 reports of the nail fastener coming loose. Denying any wrongdoing, Fisher-Price signed a settlement in March 2007, agreeing to pay a fine of \$975,000.

Other examples of civil penalties imposed on the manufacturers and retailers of children's products include: \$225,000 in 1996 against J.B.I. for dangerous playground equipment; \$725,000 in 1996 against COSCO for toddler beds and rails that caused strangulation; \$150,000 in 1998 against Binky Griptight for pacifiers that posed a choking hazard; \$225,000 against Century Products for cribs and strollers that posed a suffocation hazard; \$400,000 in 2000 against Hasbro for infant carriers that posed hazards of serious head injuries and other infant hazards; and \$200,000 in 2000 against Baby's Dream Furniture for cribs that posed fingertip amputation hazards.

In the 108th Congress, the Senate passed the "Consumer Product Safety Commission Reauthorization Act of 2003," which included a unanimously approved measure to increase the civil penalty cap to \$20 million. No action was ever taken in the House of Representatives on the Senate legislation, and the cap remains at \$1.825 million. The Committee believes that it is necessary and appropriate to increase the cap on civil penalties at this time.

#### 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." The hearing 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; Ms. 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. 2474, 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. 2474 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. 2474 or in ordering the bill reported. A motion by Mr. Dingell to order H.R. 2474 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 enhance the protection of consumers from serious injury or death by providing for increased maximum civil penalties that may be assessed by the CPSC for knowing product safety violations.

#### 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. 2474 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. 2474 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. 2474 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*

The short title of the bill is the “Product Safety Civil Penalties Improvement Act”.

##### *Sec. 2—Maximum civil penalties of the Consumer Product Safety Commission*

Section 2 of the bill increases the cap on civil penalties from \$1.825 million to \$10 million for violations of the Consumer Product Safety Act, the Flammable Fabrics Act, and the Federal Hazardous Substances Act. The increase is phased in over two years.

Initially, the cap rises to \$5 million as soon as CPSC issues interpretive guidance, or 360 days after enactment, whichever occurs first. The cap will then rise to \$10 million 1 year after the first increase.

*Sec. 3—Determination of penalties by the Consumer Product Safety Commission*

Section 3 gives CPSC more flexibility in determining the appropriate level of civil penalties that it levies on manufacturers, distributors and retailers that violate the three applicable statutes discussed in Section 2. Section 3 renders the factors that the Commission must consider more expansive than the five specific factors to which the CPSC is currently limited. Furthermore, these factors are not exclusive. For example, while CPSC currently is not permitted to consider whether a violator is a recidivist or a first-time offender, the amendments made by this section will permit that important consideration in assessing a penalty. Lastly, Section 3 requires the Commission to issue regulations providing its interpretation of these new, restated penalty factors within 360 days of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

**CONSUMER PRODUCT SAFETY ACT**

\* \* \* \* \*

CIVIL PENALTIES

SEC. 20. (a)(1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed \$5,000 for each such violation. Subject to paragraph (2), a violation of section 19(a) (1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed **[\$1,250,000]** *\$10,000,000* for any related series of violations. A violation of section 19(a)(3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violations shall constitute a separate offense, except that the maximum civil penalty shall not exceed **[\$1,250,000]** *\$10,000,000* for any related series of violations.

\* \* \* \* \*

(b) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 19(a), the Commission shall consider *the nature, circumstances, extent, and gravity of the violation, including the nature of the product defect, the severity of the risk of injury, the occurrence of absence of injury, the number of defective [products distributed, and] products distributed,* the appropriateness of such

penalty in relation to the size of the business of the person charged, *and such other factors as appropriate.*

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## FEDERAL HAZARDOUS SUBSTANCES ACT

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### PENALTIES

#### SEC. 5. (a) \* \* \*

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(c)(1) Any person who knowingly violates section 4 shall be subject to a civil penalty not to exceed \$5,000 for each such violation. Subject to paragraph (2), a violation of subsections (a), (b), (c), (d), (f), (g), (i), (j), and (k) of section 4 shall constitute a separate offense with respect to each substance involved, except that the maximum civil penalty shall not exceed ~~[\$1,250,000]~~ *\$10,000,000* for any related series of violations. A violation of section 4(e) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by section 4(e); and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed ~~[\$1,250,000]~~ *\$10,000,000* for any related series of violations.

\* \* \* \* \*

(3) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 4, the Commission shall consider *the nature, circumstances, extent, and gravity of the violation, including* the nature of the substance, the severity of the risk of injury, the occurrence or absence of injury, the amount of the ~~[substance distributed, and]~~ *substance distributed*, the appropriateness of such penalty in relation to the size of the business of the person charged, *and such other factors as appropriate.*

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## FLAMMABLE FABRICS ACT

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### ADMINISTRATION AND ENFORCEMENT

#### SEC. 5. (a) \* \* \*

\* \* \* \* \*

(e)(1) Any person who knowingly violates a regulation or standard under section 4 shall be subject to a civil penalty not to exceed \$5,000 for each such violation, except that the maximum civil penalty shall not exceed ~~[\$1,250,000]~~ *\$10,000,000* for any related series of violations.

(2) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of a regulation or standard under section 4, the Commission shall



consider the [nature and number] *nature, circumstances, extent, and gravity* of the violations, the severity of the risk of injury, the occurrence or [absence of injury, and] *absence of injury*, the appropriateness of such penalty in relation to the size of the business of the person charged, *and such other factors as appropriate.*

\* \* \* \* \*

