

107TH CONGRESS
1ST SESSION

H. R. 2993

To amend the Consumer Product Safety Act and the Federal Hazardous Substances Act regarding repair, replacement, or refund actions, civil penalties, and criminal penalties under those Acts.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2001

Mr. MARKEY (for himself, Mrs. CAPPS, and Mr. LUTHER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Consumer Product Safety Act and the Federal Hazardous Substances Act regarding repair, replacement, or refund actions, civil penalties, and criminal penalties under those Acts.

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 “Consumer Product
5 Risk Reporting Act of 2001”.

1 **SEC. 2. REPAIR, REPLACEMENT, OR REFUND.**

2 (a) Section 15(d) of the Consumer Product Safety
3 Act (15 U.S.C. 2064(d)) is amended—

4 (1) by striking “If” in the first sentence and in-
5 serting “Subject to the last 2 sentences of this sub-
6 section, if”; and

7 (2) by adding at the end the following: “If the
8 Commission determines (after affording opportunity
9 for an informal hearing) that the action that the
10 manufacturer, distributor, or retailer has elected to
11 take under paragraph (1), (2), or (3) is not in the
12 public interest, the Commission shall order the man-
13 ufacturer, distributor, or retailer to take whichever
14 other action specified in paragraph (1), (2), or (3)
15 that the Commission determines to be in the public
16 interest. If the Commission determines that both of
17 the remaining actions specified in paragraph (1),
18 (2), or (3) are in the public interest, the Commission
19 shall order the manufacturer, distributor, or retailer
20 to take whichever of those actions the manufacturer,
21 distributor, or retailer elects.”.

22 (b) Section 15(b) of the Federal Hazardous Sub-
23 stances Act (15 U.S.C. 1274(b)) is amended—

24 (1) by striking “If” in the first sentence and in-
25 serting “Subject to the last 2 sentences of this sub-
26 section, if”; and

1 (2) by adding at the end the following: “If the
2 Commission determines (after affording opportunity
3 for an informal hearing) that the action that the
4 manufacturer, distributor, or dealer has elected to
5 take under paragraph (1), (2), or (3) is not in the
6 public interest, the Commission shall order the man-
7 ufacturer, distributor, or dealer to take whichever
8 other action specified in paragraph (1), (2), or (3)
9 that the Commission determines to be in the public
10 interest. If the Commission determines that both of
11 the remaining actions specified in paragraph (1),
12 (2), or (3) are in the public interest, the Commission
13 shall order the manufacturer, distributor, or dealer
14 to take whichever of those actions the manufacturer,
15 distributor, or dealer elects.”

16 (c) Section 15(c)(2) of the Federal Hazardous Sub-
17 stances Act (15 U.S.C. 1274(c)(2)) is amended—

18 (1) by striking “If” in the first sentence and in-
19 serting “Subject to the last 2 sentences of this sub-
20 section, if”; and

21 (2) by adding at the end the following: “If the
22 Commission determines (after affording opportunity
23 for an informal hearing) that the action that the
24 manufacturer, distributor, or dealer has elected to
25 take under subparagraph (A), (B), or (C) is not in

1 the public interest, the Commission shall order the
 2 manufacturer, distributor, or dealer to take which-
 3 ever other action specified in subparagraph (A), (B),
 4 or (C) that the Commission determines to be in the
 5 public interest. If the Commission determines that
 6 both of the remaining actions specified in subpara-
 7 graph (A), (B), or (C) are in the public interest, the
 8 Commission shall order the manufacturer, dis-
 9 tributor, or dealer to take whichever of those actions
 10 the manufacturer, distributor, or dealer elects.”.

11 **SEC. 3. CIVIL PENALTIES.**

12 (a) Section 20(a) of the Consumer Product Safety
 13 Act (15 U.S.C. 2069(a)) is amended to read as follows:

14 “(a) AMOUNT OF PENALTY.—

15 “(1) Any person who knowingly violates section
 16 19 shall be subject to a civil penalty not to exceed
 17 \$7,000 for each such violation. Subject to paragraph
 18 (2), a violation of paragraph (1), (2), (4), (5), (6),
 19 (7), (8), (9), (10), or (11) of section 19(a) shall con-
 20 stitute a separate offense with respect to each con-
 21 sumer product involved. A violation of section
 22 19(a)(3) shall constitute a separate violation with re-
 23 spect to each failure or refusal to allow or perform
 24 an act required thereby, and, if such violation is a

1 continuing one, each day of such violation shall con-
2 stitute a separate offense.

3 “(2) The second sentence of paragraph (1) shall
4 not apply to violations of paragraph (1) or (2) of
5 section 19(a)—

6 “(A) if the person who violated such para-
7 graph is not the manufacturer or private labeler
8 or a distributor of the product involved, and

9 “(B) if such person did not have either—

10 “(i) actual knowledge that such per-
11 son’s distribution or sale of the product
12 violated such paragraph; or

13 “(ii) notice from the Commission that
14 such distribution or sale would be a viola-
15 tion of such paragraph.

16 “(3)(A) The penalty amount authorized in
17 paragraph (1) shall be adjusted for inflation by in-
18 creasing the amount referred to in paragraph (1) by
19 the cost-of-living adjustment for the preceding 5
20 years. Any increase determined under the preceding
21 sentence shall be rounded up to—

22 “(i) in the case of a penalty amount less
23 than or equal to \$10,000, the nearest multiple
24 of \$1,000;

1 “(ii) in the case of a penalty amount great-
2 er than \$10,000, the nearest multiple of
3 \$5,000.

4 “(B) Not later than December 1, 2005, and
5 December 1 of each 5th calendar year thereafter,
6 the Commission shall prescribe and publish in the
7 Federal Register the authorized penalty amount that
8 shall apply for violations that occur after January 1
9 of the year immediately following such publication.

10 “(C) For purposes of subparagraph (A):

11 “(i) The term ‘Consumer Price Index’
12 means the Consumer Price Index for all urban
13 consumers published by the Department of
14 Labor.

15 “(ii) The term ‘cost-of-living adjustment
16 for the preceding 5 years’ means the percentage
17 by which—

18 “(I) the Consumer Price Index for the
19 month of June of the calendar year pre-
20 ceding the adjustment exceeds

21 “(II) the Consumer Price Index for
22 the month of June preceding the date on
23 which the maximum authorized penalty
24 was last adjusted.”.

1 (b) Section 5(c) of the Federal Hazardous Substances
2 Act (15 U.S.C. 1264(c)) is amended to read as follows:

3 “(c) CIVIL PENALTIES.—

4 “(1) Any person who knowingly violates section
5 4 shall be subject to a civil penalty not to exceed
6 \$7,000 for each such violation. Subject to paragraph
7 (2), a violation of subsection (a), (b), (c), (d), (f),
8 (g), (i), (j), or (k) of section 4 shall constitute a sep-
9 arate offense with respect to each substance in-
10 volved. A violation of section 4(e) shall constitute a
11 separate violation with respect to each failure or re-
12 fusal to allow or perform an act required by section
13 4(e), and if such violation is a continuing one, each
14 day of such violation shall constitute a separate of-
15 fense.

16 “(2) The second sentence of paragraph (1) of
17 this subsection shall not apply to violations of sub-
18 section (a) or (c) of section 4—

19 “(A) if the person who violated such sub-
20 section is not the manufacturer, importer, or
21 private labeler or a distributor of the substance
22 involved; and

23 “(B) if such person did not have either—

1 “(i) actual knowledge that such per-
2 son’s distribution or sale of the substance
3 violated such subsection, or

4 “(ii) notice from the Commission that
5 such distribution or sale would be a viola-
6 tion of such subsection.

7 “(3) In determining the amount of any penalty
8 to be sought upon commencing an action seeking to
9 assess a penalty for a violation of section 4, the
10 Commission shall consider the nature of the sub-
11 stance, the severity of the risk of injury, the occur-
12 rence or absence of injury, the amount of the sub-
13 stance distributed, and the appropriateness of such
14 penalty in relation to the size of the business of the
15 person charged.

16 “(4) Any civil penalty under this subsection
17 may be compromised by the Commission. In deter-
18 mining the amount of such compromised penalty or
19 whether it should be remitted or mitigated and in
20 what amount, the Commission shall consider the ap-
21 propriateness of such penalty to the size of the busi-
22 ness of the persons charged, the nature of the sub-
23 stance involved, the severity of the risk of injury, the
24 occurrence or absence of injury, and the amount of
25 the substance distributed. The amount of such pen-

1 alty when finally determined, or the amount agreed
2 on compromise, may be deducted from any sums
3 owing by the United States to the person charged.

4 “(5) As used in the first sentence of paragraph
5 (1), the term ‘knowingly’ means—

6 “(A) having actual knowledge, or

7 “(B) the presumed having of knowledge
8 deemed to be possessed by a reasonable person
9 who acts in the circumstances, including knowl-
10 edge obtainable upon the exercise of due care to
11 ascertain the truth of representations.

12 “(6)(A) The penalty amount authorized in
13 paragraph (1) shall be adjusted for inflation by in-
14 creasing the amount referred to in paragraph (1) by
15 the cost-of-living adjustment for the preceding 5
16 years. Any increase determined under the preceding
17 sentence shall be rounded up to—

18 “(i) in the case of a penalty amount less
19 than or equal to \$10,000, the nearest multiple
20 of \$1,000;

21 “(ii) in the case of a penalty amount great-
22 er than \$10,000, the nearest multiple of
23 \$5,000.

24 “(B) Not later than December 1, 2005, and
25 December 1 of each 5th calendar year thereafter,

1 the Commission shall prescribe and publish in the
2 Federal Register the authorized penalty amount that
3 shall apply for violations that occur after January
4 1 of the year immediately following such publication.

5 “(C) For purposes of subparagraph (A):

6 “(i) The term ‘Consumer Price Index’
7 means the Consumer Price Index for all urban
8 consumers published by the Department of
9 Labor.

10 “(ii) The term ‘cost-of-living adjustment
11 for the preceding 5 years’ means the percentage
12 by which—

13 “(I) the Consumer Price Index for the
14 month of June of the calendar year pre-
15 ceding the adjustment exceeds

16 “(II) the Consumer Price Index for
17 the month of June preceding the date on
18 which the maximum authorized penalty
19 was last adjusted.”.

20 **SEC. 4. CRIMINAL PENALTIES.**

21 (a) Section 21 of the Consumer Product Safety Act
22 (15 U.S.C. 2070) is amended to read as follows:

23 “(a) Any person who knowingly violates section 19
24 shall be fined under title 18, United States Code, or be
25 imprisoned not more than 1 year, or both, if such person

1 is an individual, or fined under title 18, United States
2 Code, if such person is an organization (as the term ‘orga-
3 nization’ is defined in section 18 of title 18, United States
4 Code). Any person who knowingly and willfully violates
5 section 19 of this Act shall be fined under title 18, United
6 States Code, or be imprisoned not more than 3 years, or
7 both, if such person is an individual, or fined under title
8 18, United States Code, if such person is an organization.

9 “(b) Any individual director, officer, or agent of a
10 corporation who authorizes, orders, or performs any of the
11 acts or practices constituting in whole or in part a viola-
12 tion of subsection (a) shall be subject to penalties under
13 this section without regard to any penalties to which that
14 corporation may be subject under subsection (a).”.

15 (b) Section 5(a) of the Federal Hazardous Sub-
16 stances Act (15 U.S.C. 1264(a)) is amended to read as
17 follows:

18 “(a) CRIMINAL PENALTIES.—Any person who vio-
19 lates any of the provisions of section 4 shall be guilty of
20 a misdemeanor and shall on conviction thereof be subject
21 to a fine under title 18, United States Code, or to impris-
22 onment for not more than one year, or both, if such person
23 is an individual, or to a fine under title 18, United States
24 Code, if such person is an organization (as the term ‘orga-
25 nization’ is defined in section 18 of title 18, United States

1 Code); but for offenses committed willfully, or for second
2 and subsequent offenses, the penalty shall be imprison-
3 ment for not more than 3 years, or a fine under title 18,
4 United States Code, or both, if such person is an indi-
5 vidual, or a fine under title 18, United States Code, if
6 such person is an organization.”.

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