

111TH CONGRESS  
2D SESSION

# H. R. 5920

To prohibit the manufacture, sale, or distribution in commerce of children's products containing excessive cadmium, chromium, barium, or antimony, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2010

Ms. SPEIER introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To prohibit the manufacture, sale, or distribution in commerce of children's products containing excessive cadmium, chromium, barium, or antimony, 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.**

4 This Act may be cited as the “Toxic Metals Protec-  
5 tion Act of 2010”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1           (1) ANTIMONY.—The term “antimony” means  
2           elemental antimony and any compounds or alloys  
3           which contain antimony.

4           (2) BARIUM.—The term “barium” means ele-  
5           mental barium and any compounds or alloys which  
6           contain barium.

7           (3) CADMIUM.—The term “cadmium” means  
8           elemental cadmium and any compounds or alloys  
9           which contain cadmium.

10          (4) CHILDREN’S PRODUCT.—

11                (A) IN GENERAL.—The term “children’s  
12                product” means a product designed or intended  
13                to be worn or used by children 12 years of age  
14                or younger and sold or distributed at retail.

15                (B) DETERMINATION OF INTENTION FOR  
16                WEAR OR USE BY CHILDREN.—In determining  
17                under subparagraph (A) whether a product is  
18                designed or intended for wear or use by chil-  
19                dren 12 years of age or younger, the following  
20                factors shall be considered:

21                       (i) A statement by a manufacturer  
22                       about the intended use of the product if  
23                       such statement is reasonable.

24                       (ii) Any label on the product.

1 (iii) Whether the product is rep-  
2 resented in its packaging, display, pro-  
3 motion, or advertising as appropriate for  
4 children 12 years of age or younger.

5 (iv) Whether the product is commonly  
6 recognized by consumers as being intended  
7 for use by children 12 years of age or  
8 younger.

9 (v) The Age Determination Guide-  
10 lines: Relating Children’s Ages to Toy  
11 Characteristics and Play Behavior, issued  
12 by the Commission in September 2002,  
13 and any modifications to such Guidelines.

14 (5) CHROMIUM.—The term “chromium” means  
15 elemental chromium and any compounds or alloys  
16 which contain chromium.

17 (6) COMMISSION.—The term “Commission”  
18 means the Consumer Product Safety Commission.

19 (7) SOLD OR DISTRIBUTED AT RETAIL.—The  
20 term “sold or distributed at retail” means sold or  
21 distributed to a consumer.

1 **SEC. 3. BAN ON CHILDREN'S PRODUCTS CONTAINING CER-**  
2 **TAIN LEVELS OF ANTIMONY, BARIUM, CAD-**  
3 **MIUM, OR CHROMIUM.**

4 (a) PROHIBITION.—No person may manufacture for  
5 sale, offer for sale, or distribute in commerce any chil-  
6 dren's product containing compounds of antimony, bar-  
7 ium, cadmium, or chromium of which the metal content  
8 of the soluble material is in excess of the maximum soluble  
9 migrated element in parts per million as follows:

10 (1) 60 parts per million for antimony.

11 (2) 1,000 parts per million for barium.

12 (3) 75 parts per million for cadmium.

13 (4) 60 parts per million for chromium.

14 (b) PENALTIES.—Any failure of a person to comply  
15 with subsection (a) shall be treated as a violation of sec-  
16 tion 4 of the Federal Hazardous Substances Act (15  
17 U.S.C. 1263) and subject to the penalties set forth in sec-  
18 tion 5 of such Act (15 U.S.C. 1264).

19 **SEC. 4. ALTERNATIVE MEASURES OF HEAVY METAL CON-**  
20 **TENT.**

21 Not later than 90 days after the date of enactment  
22 of this Act, the Consumer Product Safety Commission  
23 shall establish a measurement standard for antimony, bar-  
24 ium, cadmium, and chromium based on a units-of-mass-  
25 per-area standard that is statistically comparable to the  
26 parts-per-million measurement standard currently used.

1 **SEC. 5. REPORTS.**

2 (a) IN GENERAL.—Not later than one year after the  
3 date of enactment of this Act, and annually thereafter,  
4 the Commission shall submit to Congress a report on the  
5 actions taken by the Commission to enforce the provisions  
6 of this Act, including a summary of the criminal and civil  
7 penalties imposed under section 3(b).

8 (b) HEAVY METALS.—Not later than one year after  
9 the date of the enactment of this Act, the Commission  
10 shall submit a report to Congress regarding heavy metals  
11 that should be banned from children’s products.

12 **SEC. 6. EFFECT ON FEDERAL AND STATE LAW.**

13 (a) IN GENERAL.—Nothing in this Act or section  
14 18(b)(1)(B) of the Federal Hazardous Substances Act (15  
15 U.S.C. 1261 note) shall preempt the authority of any  
16 State or political subdivision of a State to establish or con-  
17 tinue in effect a provision of the law of a State or political  
18 subdivision of a State relating to regulation of products  
19 containing chromium, cadmium, barium, or antimony, ex-  
20 cept to the extent that compliance with both State and  
21 Federal law is impossible. Nothing in this section shall be  
22 construed to modify or affect any enforcement action or  
23 liability of any person under the law of any State.

24 (b) PRESERVATION OF CERTAIN STATE LAW.—Noth-  
25 ing in this Act shall be construed to preempt or otherwise  
26 affect any warning requirement relating to consumer prod-

1 ucts or substances that is established pursuant to State  
2 law that was in effect on August 31, 2003.

3 **SEC. 7. EFFECTIVE DATE.**

4       This Act shall take effect on the date of the enact-  
5 ment of this Act and shall apply with respect to children's  
6 products manufactured on or after the date that is 90  
7 days after such date of enactment.

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