

111TH CONGRESS
1ST SESSION

H. R. 968

To amend the Consumer Product Safety Act to provide regulatory relief
to small and family-owned businesses.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2009

Mr. SHADEGG (for himself and Mr. BARTLETT) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

To amend the Consumer Product Safety Act to provide
regulatory relief to small and family-owned businesses.

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. SPECIFICATION OF CONSTITUTIONAL AUTHOR-**

4 **ITY FOR ENACTMENT OF LAW.**

5 This Act is enacted pursuant to the power granted
6 to Congress under article 1, section 8, clause 3.

1 **SEC. 2. CERTAIN REQUIREMENTS INAPPLICABLE TO SEC-**
2 **OND-HAND SELLERS.**

3 Section 19 of the Consumer Product Safety Act (15
4 U.S.C. 2068) is amended by adding at the end thereof
5 the following:

6 “(c) EXCEPTIONS FOR SECOND-HAND SELLERS.—

7 “(1) IN GENERAL.—It is not a violation of sub-
8 section (a)(1) or (a)(2) of this section for a second-
9 hand seller to sell, offer for sale, or distribute in
10 commerce—

11 “(A) a consumer product for resale that is
12 treated as a banned hazardous substance under
13 the Federal Hazardous Substances Act (15
14 U.S.C. 1261 et seq.) because of the application
15 of section 101(a) of the Consumer Product
16 Safety Improvement Act of 2008 (15 U.S.C.
17 1278a); or

18 “(B) a children’s product without the label
19 required by section 14(c) of this Act.

20 “(2) SECOND-HAND SELLER DEFINED.—In this
21 subsection, the term ‘second-hand seller’ means—

22 “(A) a consignment shop, thrift shop, or
23 similar enterprise that sells, offers for sale, or
24 distributes in commerce a product after the
25 first retail sale of that product;

1 “(B) an individual who utilizes the Inter-
 2 net, a yard sale, or other casual means of sell-
 3 ing, or offering for sale, such a product; or

4 “(C) a person who sells, or offers for sale,
 5 such a product at an auction for the benefit of
 6 a nonprofit organization.”.

7 **SEC. 3. PROSPECTIVE APPLICATION OF LEAD CONTENT**
 8 **AND THIRD PARTY TESTING RULES.**

9 (a) LEAD CONTENT.—Section 101(a) of the Con-
 10 sumer Product Safety Improvement Act of 2008 (15
 11 U.S.C. 1278a(a)) is amended—

12 (1) by striking “(b) beginning on the dates pro-
 13 vided in paragraph (2),” in paragraph (1) and in-
 14 serting “(b),”;

15 (2) by striking “(15 U.S.C. 1261 et seq.)” in
 16 paragraph (1) and inserting “(15 U.S.C. 1261 et
 17 seq.) if it is manufactured after the date on which
 18 such limit takes effect.”;

19 (3) by striking “180 days” in paragraph (2)(A)
 20 and inserting “360 days”;

21 (4) by striking “1 year” in paragraph (2)(B)
 22 and inserting “18 months”;

23 (5) by striking “3 years” in paragraph (2)(C)
 24 and inserting “3½ years”; and

1 (6) by striking “3 years” in paragraph (2)(D)
 2 and inserting “3½ years”.

3 (b) THIRD PARTY TESTING.—Section 14(a)(3)(A) of
 4 the Consumer Product Safety Act (15 U.S.C.
 5 2063(a)(3)(A)) is amended by inserting “after August 9,
 6 2009, and” after “manufactured”.

7 (c) APPLICATION.—The amendments made by sub-
 8 sections (a) and (b) shall be treated as having taken effect
 9 on August 15, 2008.

10 **SEC. 4. LEAD CONTENT CERTIFICATION; WAIVER OF THIRD**
 11 **PARTY TESTING REQUIREMENT.**

12 Section 14(g) of the Consumer Product Safety Act
 13 (15 U.S.C. 2063(g)) is amended by adding at the end
 14 thereof the following:

15 “(5) SPECIAL RULE FOR LEAD CONTENT TEST-
 16 ING AND CERTIFICATION.—Subsection (a) shall not
 17 require the manufacturer or private labeler of a
 18 product to test a product for, or certify it with re-
 19 spect to, lead content if—

20 “(A) each component of the product has
 21 been tested for lead content by the manufac-
 22 turer or private labeler of the component; and

23 “(B) the manufacturer or private labeler of
 24 each such component certifies that the compo-
 25 nent (including paint, electroplating, and other

1 coatings) does not contain more lead than the
2 limit established by section 101(a)(2) of the
3 Consumer Product Safety Improvement Act of
4 2008 (15 U.S.C. 1278a(a)(2)).”.

5 **SEC. 5. SUSPENSION OF ENFORCEMENT PENDING FINAL**
6 **REGULATIONS.**

7 Notwithstanding any provision of law to the contrary,
8 neither the Consumer Product Safety Commission nor the
9 Attorney General of any State may initiate an enforce-
10 ment proceeding under the Consumer Product Safety Act
11 or the Federal Hazardous Substances Act for failure to
12 comply with the requirements of, or for violation of, the
13 following provisions of law until 30 days after the date
14 on which the Commission issues the referenced rule, regu-
15 lation, or guidance:

16 (1) Section 101(a) of the Consumer Product
17 Safety Improvement Act of 2008 (15 U.S.C. 1278a)
18 with respect to materials, products, or parts de-
19 scribed in subsection (b)(1), until the date on which
20 the Commission promulgates a final rule providing
21 the guidance required by section 101(b)(2)(B) of
22 that Act.

23 (2) Section 101(a) of that Act with respect to
24 certain electronic devices described in section
25 101(b)(4) of that Act, until the date on which the

Commission, by final regulation, issues the requirements described in subparagraph (A) of section 101(b)(4) and establishes the schedule described in subparagraph (A) of section 101(b)(4).

(3) Section 14(a)(1) or (2) of the Consumer Product Safety Act (15 U.S.C. 2063(a)(1) or (2)), until the date on which—

(A) the Commission has established and published final notice of the requirements for accreditation of third party conformity assessment bodies under section 14(a)(3)(B)(vi) of that Act for products to which children's product safety rules established or revised before August 14, 2008, apply,

(B) the Commission has established by final regulation requirements for the periodic audit of third party conformity assessment bodies under section 14(d)(1) of that Act (15 U.S.C. 2063(d)(1)), or

(C) the Commission has by final regulation initiated the program required by section 14(d)(2)(A) of that Act (15 U.S.C. 2063(d)(2)(A)) and established protocols and standards under section 14(d)(2)(B) of that Act (15 U.S.C. 2063(d)(2)(B)),

1 whichever is last.

2 **SEC. 6. WAIVER OF CIVIL PENALTY FOR INITIAL GOOD**
 3 **FAITH VIOLATION.**

4 Section 20(c) of the Consumer Product Safety Act
 5 (15 U.S.C. 2069(c)) is amended by adding at the end
 6 thereof the following: “The Commission shall waive any
 7 civil penalty under this section if the Commission deter-
 8 mines that—

9 “(1) the violation is the first violation of section
 10 19(a) by that person; and

11 “(2) the person was acting in good faith with
 12 respect to the act or omission that constitutes the
 13 violation.”.

14 **SEC. 7. SMALL ENTERPRISE COMPLIANCE ASSISTANCE.**

15 (a) IN GENERAL.—Within 180 days after the date
 16 of enactment of this Act, or as soon thereafter as is prac-
 17 ticable, the Consumer Product Safety Commission, in con-
 18 sultation with the Small Business Administration and
 19 State small business agencies, shall develop a compliance
 20 guide for small enterprises to assist them in complying
 21 with the requirements of the Consumer Product Safety
 22 Act (15 U.S.C. 2051 et seq.) and other Acts enforced by
 23 the Commission.

24 (b) CONTENTS.—The guide—

1 (1) shall be designed to assist small enterprises
2 to determine—

3 (A) whether the Consumer Product Safety
4 Act (or any other Act enforced by the Commis-
5 sion) applies to their business activities;

6 (B) whether they are considered distribu-
7 tors, manufacturers, private labelers, or retail-
8 ers under the Act; and

9 (C) which rules, standards, regulations, or
10 statutory requirements apply to their business
11 activities;

12 (2) shall provide guidance on how to comply
13 with any such applicable rule, standard, regulation,
14 or requirement, including—

15 (A) what actions they should take to en-
16 sure that they meet the requirements; and

17 (B) how to determine whether they have
18 met the requirements; and

19 (3) may contain such additional information as
20 the Commission deems appropriate, including tele-
21 phone, e-mail, and Internet contacts for compliance
22 support and information.

23 (c) PUBLICATION AND DISTRIBUTION.—The Com-
24 mission shall—

1 (1) publish a sufficient number of copies of the
2 guide to satisfy both individual requests for copies
3 and mass requests to accommodate distribution by
4 chambers of commerce, trade associations and other
5 organizations the membership of which includes
6 small enterprises whose business activities are af-
7 fected by the requirements of the Consumer Product
8 Safety Act and other Acts enforced by the Commis-
9 sion;

10 (2) make the guide available, without charge,
11 by mail; and

12 (3) provide easy access to the guide on the
13 Commission's public website.

○