

PRODUCT SAFETY CIVIL
PENALTIES IMPROVEMENT ACT

Mr. RUSH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2474) to provide for an increased maximum civil penalty for violations under the Consumer Product Safety Act, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 2474

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Illinois (Mr. RUSH) and the gentleman from Florida (Mr. STEARNS) each will control 20 minutes.

The Chair recognizes the gentleman from Illinois.

GENERAL LEAVE

Mr. RUSH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. RUSH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am the author of the third consumer protection bill that we are considering on the House floor this afternoon, H.R. 2474, the Product Safety Civil Penalties Improvement Act, which raises the cap on civil penalties that the Consumer Product Safety Commission can impose from \$1.83 million to \$10 million. Furthermore, the new cap will be phased in through two steps. It rises to \$5 million as soon as the CPSC issues its new interpretive guidelines or one year after reenactment, whichever occurs first. Mr. Speaker, the cap will subsequently rise to its full \$10 million one year after this initial increase. This new cap figure and two-step process is the product of careful negotiations and compromise with the minority.

Furthermore, the bill, as amended in this subcommittee, renders the factors used in assessing the amount of penalties more expansive and flexible, and it further makes clear that the current list of factors is not exclusive. This flexibility will allow the commission to take into account factors such as whether the manufacturer is a recidivist or a first-time offender when imposing these civil penalties. In this regard CPSC is required to promulgate interpretive rules on these penalty factors within 360 days.

Mr. Speaker, passage of H.R. 2474 is badly needed. For too long the CPSC

has only been able to slap violators on the wrist with a puny civil penalties cap of \$1.8 million. Under current law, section 15(b) of the Consumer Product Safety Act requires every manufacturer, every distributor, or retailer of a consumer product to notify the CPSC immediately upon information that reasonably supports the conclusion that a given product, one, violates a safety standard promulgated by the CPSC; two, contains a defect that could pose a substantial hazard; or, three, otherwise creates an unreasonable risk of injury or death.

Unfortunately, for many large companies, a civil penalty of \$1.83 million is a mere drop in the bucket and does not always provide substantial and sufficient incentive for companies to report problems to the commission. The cost of civil penalties may be outweighed by the cost of compliance with the prohibitions and requirements of the law. For instance, at our June 6 hearing before the Subcommittee on Commerce, Trade, and Consumer Protection, we heard testimony that the \$750,000 fine 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.

While most companies try to do the right thing and report injuries in a timely manner to the CPSC, H.R. 2474 gives the commission a bigger hammer to crack down on bad corporate behavior that leads to defective and dangerous products on the market.

Mr. Speaker, I urge a "yes" vote from my colleagues on this bipartisan piece of legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. STEARNS. Mr. Speaker, I yield myself such time as I may consume. This is a straightforward bill, and we support it on this side. Of the four consumer product safety bills that we have on the floor, we feel this is the one that is the most straightforward and, obviously, we support and we speak in favor of it.

My colleagues, go back to 1972. The House passed the Consumer Product Safety Act. At that time the penalty was simply \$500,000. Now let's leap ahead. Adjusted for inflation, what is that equivalent in today's dollars? About \$2.5 million. However, the original penalty maximum in the CPSA was not indexed to inflation; so \$500,000 as years went by up to 1990 was a pretty paltry amount over this period of time. And then in 1990 it was indexed to inflation so that the current civil penalty maximum is \$1.825 million.

The chairman would indicate that is a small incentive for companies out there. I submit that the penalty is not the big product for companies. It's bad PR. If you are a Wal-Mart and you have a product that is defective or you are a toy manufacturer, the penalty is going to be a deterrent, but the big deterrent is you won't be able to sell that product if those products have to be recalled and everybody knows that your

company has manufactured a defective product.

I support the ability of the Consumer Product Safety Commission to penalize those who willfully, willfully violate the act. At the same time, we are not sure whether the effect of an increase in potential penalties to as much as \$10 million will have the desired effect.

I can support this measure, however, because there are three key factors when you look at this bill. First, the increase in the penalty maximum will be phased in, thanks to the chairman and his staff and our staff working together. Two, this measure amends the CPSC to include specific penalty assessment factors. And, three, the measure directs the CPSC to promulgate rules interpreting these factors and delineates how the commission will assess the fines.

My colleagues, this last factor in particular is important to our business community. Interpretive rules are necessary to provide guidance, clarity, and some predictability to regulate industries. Additionally, interpretive guidelines will provide a constant framework within which the CPSC may act. \$10 million is too great an amount to not act responsibly, I agree with the chairman. That is a deterrent, and consistently imposing such fines is important.

□ 1615

But again, I point out that the larger deterrent for corporations is the fact that the publicity will be damaging to their sale of future products.

So, I would commend the chairman for his leadership in updating the CPSC on this matter, again, for his staff working with us to create, I think, a bipartisan work product that all of us, both Democrats and Republican, can support.

Mr. Speaker, I yield back the balance of my time.

Mr. RUSH. Mr. Speaker, this, again, is another example of commonsense legislation, bipartisan cooperation that is aimed at improving and enhancing the flow of commerce between consumers and manufacturing.

Mr. Speaker, this piece of legislation takes a giant, giant step toward improving the overall product safety, product recall phenomenon that exists to stream the system that exists.

I urge passage of this outstanding piece of legislation.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. RUSH) that the House suspend the rules and pass the bill, H.R. 2474, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT

Mr. RUSH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1721) to increase the safety of swimming pools and spas by requiring the use of proper anti-entrapment drain covers and pool and spa drainage systems, by establishing a swimming pool safety grant program administered by the Consumer Product Safety Commission to encourage States to improve their pool and spa safety laws and to educate the public about pool and spa safety, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1721

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Virginia Graeme Baker Pool and Spa Safety Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Federal swimming pool and spa drain cover standard.

Sec. 4. State swimming pool safety grant program.

Sec. 5. Minimum State law requirements.

Sec. 6. Education program.

Sec. 7. Definitions.

Sec. 8. CPSC report.

SEC. 2. FINDINGS.

The Congress finds that—

(1) of injury-related deaths, drowning is the second leading cause of death in children aged 1 to 14 in the United States;

(2) there are approximately 260 drowning deaths of children younger than age 5 each year in swimming pools, and an estimated 2,725 children are treated annually in hospital emergency rooms for pool submersion injuries, mostly in residential pools;

(3) many children die due to pool and spa drowning and entrapment, such as Virginia Graeme Baker, who at age 7 drowned by entrapment in a residential spa, and Preston de Ibern, who at age 5 nearly drowned and was left permanently brain damaged, finally succumbing to his catastrophic healthcare issues when he was 12 years old;

(4) adult supervision at all aquatic venues is a critical safety factor in preventing children from drowning; and

(5) research studies show that the installation and proper use of barriers or fencing, as well as additional layers of protection, could substantially reduce the number of childhood residential swimming pool drownings and near drownings.

SEC. 3. FEDERAL SWIMMING POOL AND SPA DRAIN COVER STANDARD.

(a) **CONSUMER PRODUCT SAFETY RULE.**—The provisions of subsection (b) shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

(b) **DRAIN COVER STANDARD.**—Effective 1 year after the date of enactment of this Act, each swimming pool or spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard.

(c) **REVISION OF RULE.**—If, after the enactment of this Act, ANSI proposes to revise the entrapment protection requirements of ASME/

ANSI A112.19.8, ANSI shall notify the Consumer Product Safety Commission of the proposed revision and the proposed revision shall be incorporated in the consumer product safety rule under subsection (a) unless, within 60 days of such notice, the Commission notifies ANSI that the Commission has determined that such revision does not carry out the purposes of subsection (b).

(d) **IMPLEMENTING REGULATIONS.**—Section 553 of title 5, United States Code, shall apply with respect to the issuance of any regulations by the Consumer Product Safety Commission to implement the requirements of this section, and sections 7 and 9 of the Consumer Product Safety Act shall not apply to such issuance.

SEC. 4. STATE SWIMMING POOL SAFETY GRANT PROGRAM.

(a) **IN GENERAL.**—Subject to the availability of appropriations authorized by subsection (e), the Commission shall establish a grant program to provide assistance to eligible States.

(b) **ELIGIBILITY.**—To be eligible for a grant under the program, a State shall—

(1) demonstrate to the satisfaction of the Commission that it has a State statute, or that, after the date of enactment of this Act, it has enacted a statute, or amended an existing statute, that provides for the enforcement of a law that—

(A) except as provided in section 5(a)(1)(A)(i), applies to all swimming pools in the State; and

(B) meets the minimum State law requirements of section 5; and

(2) submit an application to the Commission at such time, in such form, and containing such additional information as the Commission may require.

(c) **AMOUNT OF GRANT.**—The Commission shall determine the amount of a grant awarded under this Act, and shall consider—

(1) the population and relative enforcement needs of each qualifying State; and

(2) allocation of grant funds in a manner designed to provide the maximum benefit from the program in terms of protecting children from drowning or entrapment, and, in making that allocation, shall give priority to States that have not received a grant under this Act in a preceding fiscal year.

(d) **USE OF GRANT FUNDS.**—A State receiving a grant under this section shall use—

(1) at least 50 percent of amount made available to hire and train enforcement personnel for implementation and enforcement of standards under the State swimming pool and spa safety law; and

(2) the remainder—

(A) to educate pool construction and installation companies and pool service companies about the standards;

(B) to educate pool owners, pool operators, and other members of the public about the standards under the swimming pool and spa safety law and about the prevention of drowning or entrapment of children using swimming pools and spas; and

(C) to defray administrative costs associated with such training and education programs.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Commission for each of fiscal years 2009 through 2013 \$5,000,000 to carry out this section, such sums to remain available until expended.

SEC. 5. MINIMUM STATE LAW REQUIREMENTS.

(a) **IN GENERAL.**—

(1) **SAFETY STANDARDS.**—A State meets the minimum State law requirements of this section if—

(A) the State requires by statute—

(i) the enclosure of all outdoor residential pools and spas by barriers to entry that will effectively prevent small children from gaining unsupervised and unfettered access to the pool or spa;

(ii) that all pools and spas be equipped with devices and systems designed to prevent entrapment by pool or spa drains;