



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

Record of Commission Action
Commissioners Voting by Ballot

1111 - 18th Street, N.W.
Washington, D.C.

Voting: Chairman King
Commissioner Pittle
Commissioner Sloan
Commissioner Zagoria

ITEM

Comments of the Commission on H.R. 4204, a Product Liability Bill

(Briefing material transmitted by the Office of the Secretary on
July 5, 1979)

DECISION

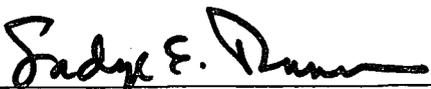
The Commission approved the attached letter setting forth the Commission's views on the above-referenced bill for transmittal to the Honorable Harley O. Staggers, Chairman of the Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

VOTE

Concurring: Chairman King (7/13/79)
Commissioner Pittle (7/13/79)
Commissioner Sloan (7/13/79)
Commissioner Zagoria (7/13/79)

Attachment

For the Commission:


Sadye E. Dunn, Secretary

JUL 19 1979

Honorable Harley O. Stagers
Chairman, Committee on Interstate and
Foreign Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your request for the comments of the Consumer Product Safety Commission on H.R. 4204, a bill to improve the safety of products manufactured and sold in interstate commerce, to reduce the number of deaths and injuries caused by such products, and for other purposes.

As you know, the Commission's regulatory, consumer information, and other activities are primarily directed toward protecting the public against unreasonable risks of injury associated with consumer products. H.R. 4204 concerns product liability tort actions which, in part, accomplish the same purpose. Although the Commission has no direct involvement in such actions, we believe that the product liability system should remain as strong an incentive as possible to the manufacture of safe consumer products.

Since the Commission has no particular expertise in product liability tort law, we believe it is inappropriate to comment in great detail on the specific provisions of H.R. 4204. Nevertheless, we are concerned that some provisions of the bill might serve to weaken the ability of consumers to prove the legal accountability of manufacturers of unsafe products. If this occurred, the incentive of manufacturers to produce safe products would be reduced.

As one example, the bill would permit the creation of rebuttable presumptions that a product design is not defective and that the person responsible for the design is not negligent (section 8(a)(3)). The presumption would be based on evidence that the design complies with applicable federal or state standards. However, some standards set only minimal safety requirements so that complying products may still be negligently designed and dangerously defective. We question the appropriateness of this provision in the bill. In fact, a provision that created presumptions of defectiveness for noncomplying products might be more appropriate to assist recovery by victims of defective products. On this issue, we note that section 25(a) of the Consumer Product Safety Act provides that "[c]ompliance with consumer product safety rules or other rules or orders under this Act shall not relieve any person from liability at common law or under State statutory law to any other person" (15 U.S.C. 2074(a)).

As additional examples, the bill would: preempt all product liability causes of action that are currently available under state law (section 3); impose a two-year statute of limitations on the filing of product liability actions (section 7); provide manufacturers with a contributory negligence defense (section 8(a)(2)(A) and (B)); create presumptions against the defectiveness of certain products older than ten years (section 8(a)(6)); allow into evidence information about who has paid certain health costs (section 8(a)(7)); prohibit certain evidence about improvements in, or repairs to, a product after it has harmed an individual (section 8(a)(8)); and restrict the awarding of punitive and exemplary damages (section 8(c)). In addition, terms such as "harm" and "caused," which are crucial to any product liability system, are defined in the bill so imprecisely that differing interpretations could result (section 4).

Without comparing every provision in H.R. 4204 to the statutory and common law in every state, we do not know whether the product liability recovery of deserving victims would be hampered. However, we have doubts about the advisability of enacting any comprehensive national product liability law. Its potential for creating disincentives to the manufacture of safe consumer products is difficult to

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assess in advance, and the consequences of supplanting state product liability law could be serious for consumers.

Thank you for the opportunity to make these comments.

Sincerely,



Susan B. King
Chairman

bcc: ogc chron
ogc file
ogc reading
ogc attorney-Shakin:ad:7/16/79

CC: Linda B. Kiser, OCR