

F I N A L

MINUTES OF EXECUTIVE SESSION
May 2, 1974

PRESENT: Chairman Simpson
Vice Chairman Franklin
Commissioner Kushner
Commissioner Newman
Commissioner Pittle

Agenda Item

Draft Model Law for States

Decision and Followup

The Commissioners approved a discussion version of a draft model law for distribution at the CPSC/State Conference on Product Safety on May 15-17, 1974. The version approved is attached.

Voting for: Chairman Simpson, Vice Chairman Franklin,
Commissioner Kushner, Commissioner Pittle,
Commissioner Newman

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CONSUMER PRODUCT
SAFETY COMMISSION

Submitted by:
Commissioner Kushner
May 9, 1974

DRAFT [STATE] CONSUMER PRODUCT SAFETY ACT

Section 1. This Act may be cited as the [State] Consumer Product Safety Act.

Section 2. This Act shall be administered by the [] of the State of [], hereinafter referred to as the Agency.

Section 3. Declaration of Purpose. The purpose of this Act is to reduce unreasonable risks of injury to the public which are associated with the use of consumer products. To further this purpose, the Agency will promote educational programs and assist where necessary in the administration and enforcement of consumer product safety rules and other regulations in accordance with the Federal Act.

Section 4. Definitions. For purposes of this Act:

(1) The term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include --

(A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer;

(B) tobacco and tobacco products;

(C) motor vehicles or motor vehicle equipment (as defined by sections 102(3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966);

(D) economic poisons (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act);

(E) any article which, if sold by the manufacturer or producer would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article;

(F) aircraft, aircraft engines, propellers, or appliances (as defined in section 101 of the Federal Aviation Act of 1958);

(G) boats which could be subjected to safety regulation under the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.); vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 3(8) of the Federal Boat Safety Act of 1971) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this paragraph;

(H) drugs, devices, or cosmetics (as such terms are defined in sections 201(g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act); or

(1) food. The term "food", as used in this subparagraph means all "food", as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act, including poultry and poultry products (as defined in sections 4(e) and (f) of the Poultry Products Inspection Act), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act).

(2) The term "consumer product safety rule" means a consumer product safety standard or a rule declaring a consumer product a banned hazardous product as described in the Federal Act.

(3) The term "risk of injury" means a risk of death, personal injury, or serious or frequent illness.

(4) The term "manufacturer" means any person who manufactures a consumer product.

(5) The term "distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(6) The term "retailer" means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(7) (A) The term "private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

(8) The term "manufacture" means to manufacture, produce, or assemble.

(9) The term "Agency" means the [] of the State of [] which is empowered under this Act to consolidate the functions relating to product safety and other consumer protection activities.

(10) The term "Federal Act" means the Consumer Product Safety Act of 1972, (Public Law 92-573, 86 Stat. 1207 et seq., 15 U.S.C. 2051 et seq.).

Section 5. Consumer Product Safety Agency. (1) The Agency may receive grants from and contract with federal officials on behalf of the State of [] in matters of product safety information and research, educational programs, injury data collection or investigation into the possibilities of reducing or eliminating unreasonable risks of injuries associated with consumer products, and with administration and enforcement of the Federal Act.

(2) The Agency shall establish procedures with the appropriate federal officials for the commissioning of State officers or

employees for the purpose of conducting examinations and inspections of manufacturers, distributors, retailers and private labelers of consumer products, to insure compliance with consumer product safety rules issued under this Act and the Federal Act, and with the other applicable federal rules and regulations regarding product certification, inspection, recordkeeping, labeling, new products and stockpiling. The Agency shall establish procedures for the general administration and enforcement of this Act which shall not conflict with the administration and enforcement of the Federal Act.

(3) The Agency may petition for issuance, amendment or revocation of federal consumer product safety rules, pursuant to the Federal Act when it finds that a consumer product presents an unreasonable risk of injury to the citizens of [State].

(4) The Agency may contract with State and municipal instrumentalities and private persons or agencies for assistance in achieving the purposes of this Act.

Section 6. Product Safety Information and Research. The Agency may:

(1) maintain an injury information clearinghouse to collect, investigate, analyze and disseminate injury data and information relating to the causes and prevention of death, injury and illness associated with consumer products;

(2) conduct such continuing studies and investigations of deaths, injuries, diseases, other health impairments and economic losses resulting from accidents involving consumer products, as it deems necessary;

(3) conduct research, studies, and investigations of the safety of consumer products;

(4) test consumer products; and

(5) offer training in product safety investigation and test methods.

Section 7. Consumer Product Safety Rules. When under the Federal Act, a consumer product safety rule has been promulgated, modified, or amended, respecting a risk of injury associated with a consumer product, (which rule sets a mandatory product safety standard or declares a product to be a banned hazardous product,) such rule shall be a consumer product safety rule of [State].

Section 8. Imminent hazards. When, under the Federal Act, an imminently hazardous product has been ordered seized or condemned, such product shall be an imminent hazard under this Act. The Agency may, pursuant to section 5(2) of this Act, deploy its officers and employees to perform the duties of investigating, inspecting and enforcing the federal orders promulgated under applicable sections of the Federal Act. For purposes of this section, an imminent hazard exists when a consumer product presents an imminent and unreasonable risk of death, serious illness or severe personal injury.

Section 9. Substantial product hazard -- defect notices -- recalls -- refunds.

(1) For purposes of this section, the term "substantial product hazard" means:

(A) a failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public; or

(B) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(2) When, under the Federal Act, a federal determination has been made that a consumer product presents a substantial product hazard, and that notification is required to protect the public from such substantial product hazard or an order is issued that the product should be repaired, replaced or that its purchase price should be refunded, the Agency shall assist, when requested by the Consumer Product Safety Commission, to implement that determination.

Section 10. Prohibited Acts. It shall be unlawful to:

(1) manufacture for sale, offer for sale, or distribute in commerce, any consumer product which is not in conformity with an applicable consumer product safety standard under this Act;

(2) manufacture for sale, offer for sale, or distribute in commerce, any consumer product which has been declared a banned hazardous product by a rule under this Act;

(3) fail or refuse to permit access to or copying of records, or fail or refuse to make reports or provide information, or fail or refuse to permit entry or inspection, as required under this Act or rule thereunder;

(4) fail to comply with an order relating to notification, and to repair, replacement, or refund;

(5) fail to furnish a certificate or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect; or to fail to comply with any rule relating to labeling; or

(6) fail to comply with any rule relating to stockpiling.

Section 11. Penalties. (1) Any person who knowingly violates section 10 of this Act shall be subject to a civil penalty not to exceed []. [This may be elaborated pursuant to State law.]

Section 12. Effect on private remedies. Compliance 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 other State statutory law to any other person.

Section 13. Regulations. (1) All regulations prescribing consumer product safety rules and other regulations affecting consumer products now or hereafter adopted under authority of the Federal Act, shall also be regulations for consumer product safety in this State.

(2) Compliance with federal regulations prescribing consumer product safety rules and with other regulations affecting consumer products issued pursuant to the Federal Act, shall be deemed to be compliance with this Act.

(3) A federal regulation adopted pursuant to this section of the Act takes effect in this State on the date it becomes effective as a federal regulation. No publication or hearing shall be required.

(4) The authority to promulgate regulations for the efficient enforcement of this Act is vested in the director of the Agency. The director is authorized to make such regulations conform, insofar as is practicable, with those promulgated under the Federal Act.

Section 14. It is hereby expressly declared that it is the intent of the Legislature to supersede any and all laws, regulations, and ordinances of any political subdivision of this State insofar as they now or hereafter provide for standards or regulations for the promulgation of consumer product safety rules and other regulations subject to the provisions of this Act. Any law, regulation, or ordinance of such political subdivision which purports to establish such standard or regulation, shall be null and void.

FINAL

MINUTES OF EXECUTIVE SESSION

May 2, 1974

PRESENT: Chairman Simpson
Vice Chairman Franklin
Commissioner Kushner
Commissioner Newman
Commissioner Pittle

Agenda Item

Health Research Group petition (21 Feb. 1974) requesting CPSC to declare aerosolized consumer products containing vinyl chloride "banned hazardous substances."

Decision and Followup

Based on evidence supplied by the petitioner and by the CPSC staff on the health hazard associated with the inhalation of vinyl chloride, The Commission will propose in the Federal Register that aerosol products using vinyl chloride as a propellant shall be "banned hazardous substances" under the Federal Hazardous Substances Act.

Voting for: Vice Chairman Franklin, Commissioner Kushner,
Commissioner Newman, Commissioner Pittle

Abstain : Chairman Simpson

(Concurrently a Federal Register notice will be released announcing that (1) CPSC believes aerosol products using vinyl chloride propellants contain a defect which could create a substantial hazard to consumers and (2) all manufacturers of such products, under the provisions of Sec. 15(b) of the CPSA, must provide the Commission with information described in the Notice.)

Submitted by:
Commissioner Kushner
May 9, 1974