



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

Record of Commission Action
Commissioners Voting by Ballot *

Commissioners Voting: Chairman Ann Brown
 Commissioner Mary Sheila Gall
 Commissioner Thomas H. Moore

ITEM

Draft Bill and Press Release Concerning Legislation to Expand CPSC's Enforcement Authority

DECISION

The Commission voted 2-1 to approve a draft press release, and the position taken in it, concerning draft legislation to amend provisions of the Consumer Product Safety Act and the Federal Hazardous Substances Act with respect to repair, replacement, or refund actions; civil penalties; and criminal penalties, to help expand CPSC's authority to crack down on firms that are not reporting defective products to the agency. Chairman Brown and Commissioner Moore voted to approve. Commissioner Gall voted in dissent and filed a statement concerning her vote, copy attached.

For the Commission:

A handwritten signature in cursive script, reading "Sadye E. Dunn".

Sadye E. Dunn
Secretary

* Ballot vote due May 12, 2000

**STATEMENT OF THE HONORABLE
MARY SHEILA GALL IN OPPOSITION TO THE
CONSUMER PRODUCT SAFETY COMMISSION
ENHANCED ENFORCEMENT ACT OF 2000**

May 12, 2000

The Commission has been presented with a ballot asking it to endorse, oppose, or modify a press release accompanied by a draft bill labeled the "Consumer Product Safety Commission Enhanced Enforcement Act of 2000." I write to express my opposition to this draft legislation.

Restricting Election of Remedy

Section 2 of the draft legislation modifies the procedures governing the election of the "repair, replace or refund" remedy that Section 15 of the Consumer Product Safety Act (CPSA) and Section 15 of the Federal Hazardous Substances Act (FHSA) give to manufacturers, distributors and retailers. The change enables the Commission to *reject* the election made by the manufacturer, distributor or retailer to repair, replace or refund the defective item, if the Commission finds that the election was not in the public interest. The effect of this change would be to enable the Commission to virtually dictate the remedy.

Under present law the Commission is not helpless if a repair, replace or refund program is not protecting the public. If the Commission concludes that the remedy elected *and carried out* by the manufacturer, distributor or retailer has not eliminated or adequately reduced the risk from the defective product, the Commission may reopen the case. The present system strikes an adequate balance between product safety and economic rationality and I do not support a change.

Eliminating Civil Penalty Limits

Section 3 of the draft legislation eliminates any limits on civil penalties for violations of the CPSA or the FHSA. Eliminating limits would obviously increase the stakes of any failure to report. At the same time, there has been no civil penalty during the time during which I have served as Commissioner that came close to the present limit of 1.6 million dollars. (A staff-developed list of civil penalties assessed in the last five years is attached.) It is, therefore, difficult to see how eliminating the civil penalty limitation would materially improve the Commission's enforcement ability. It is the certainty of a penalty, rather than its theoretical upper limit that serves as a better deterrent to failures to report product hazards.

Criminal Violations

Section 4 of the draft legislation amends the CPSA to create two tiers of criminal violations. A “knowing” violation of Section 19 is a misdemeanor. Under present law a violation must be *both* knowing and willful to be even a misdemeanor. Section 4 of the draft legislation further amends the CPSA to make a knowing and willful violation of Section 19 a felony. The legislation eliminates the present requirement that there be a notice of noncompliance from the Commission, and an opportunity for a company to come into compliance, prior to a criminal violation of the CPSA. The same section of the draft legislation makes willful violations of the FHSA a felony.

I do not oppose making criminal violations of the CPSA and FHSA felonies, but I firmly oppose removing the requirement that companies be told that they are in noncompliance with the CPSA, and be given an opportunity to come into compliance, before being prosecuted for criminal violations of the CPSA. While the Commission does deal with many large companies that have staff and counsel who are aware of the Commission and its activities, the Commission also encounters many small companies who have no idea that the Commission even exists and that there are regulations or standards concerning the products that they make. These companies should not be subject to criminal prosecution for violation of the CPSA without receiving at least a notice that they are in violation and an opportunity to correct the violation.

During my over eight years of service as a Commissioner, I have been a strong supporter of the Commission’s enforcement function. This legislation, despite its label, would do little to actually enhance that function and contains elements of both economic irrationality and of unfairness to manufacturers, distributors and retailers.

Penalties for Failure to Report 1996-2000

Over the past 5 years, CPSC has fined 21 firms for failing to report nearly 360 injuries and four deaths associated with hazardous products.

<u>Firm</u>	<u>Penalty</u>	<u>Hazard</u> 2000	<u>Injuries (before report)</u>
Black & Decker toasters	\$575,000	fire	73 fires/2 injuries
Baby's Dream cribs	\$200,000	fingertip amputations	9 amputations/crushed fingers
Hasbro infant carriers	\$400,000	skull fracture	8, 7 were skull fractures
Lancaster Col. candles	\$150,000	fires and burns	142 flare ups, 20 burns, 55 property da
1999			
Carter Bros. go-karts	\$125,000	death	1 death, 1 skull fracture
Shimano bicycle cranks	\$150,000	fractures and lacerations	630 failures, 22 including fractures and lacerations
Central Sprinkler fire sprinklers	\$1.3 million paid into a trust	burns	17 fires, 4 injuries
1998			
Binky Griptight pacifiers	\$150,000	suffocation	no injuries
Century Products cribs and strollers	\$225,000 \$166,000	suffocation impact injury	1 death 29 injuries
COA Inc. cribs	\$300,000	suffocation	no injuries
Safety First bed rails	\$175,000	suffocation	25 injuries
1997			
Brinkmann smokers and fryers	\$175,000	lacerations, fire	1 death, many lesser injuries
CSA Inc. exercisers	\$100,000	impact injury	52 incidents, many injuries
Hartman hair dryers	\$60,000	fire	no injuries
Nutone stereos	\$110,000	fire	12 fires, no injuries
Toro riding mowers	\$250,000	impact injury	31 incidents. some serious injuries
1996			
JBH Inc. playground equipment	\$225,000	protruding hardware	70 injuries including 40 fractures
Singer Sewing juicers	\$120,000	flying parts	19 incidents, 10 injuries
National Media juicers	\$150,000	flying parts	9 injuries
Taito America arcade games wrists/arms	\$50,000	metal pad	70 injured/fractured
Cosco toddler bed guardrails	\$725,000	strangulation	25 entrapments, 1 death

News from CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs

Washington, D.C. 20207

For Immediate Release
, 2000
Release # 00-DRAFT

Contact:
(301) 504-0580 Ext.

White House Proposes Legislation to Expand CPSC's Authority to Crack Down on Firms Not Reporting Dangerous Products

WASHINGTON, D.C. - First Lady Hillary Rodham Clinton joined U.S. Consumer Product Safety Commission (CPSC) Chairman Ann Brown today to announce legislation to help expand CPSC's authority to crack down on firms that are not reporting defective products to the agency. CPSC conducts 200 to 300 product recalls each year, yet half of the most serious product hazards are discovered by CPSC investigators, not reported by the company as required by law.

The following proposals were announced today at a White House news conference:

- **Eliminate the \$1.65 million cap on the maximum fine that CPSC can impose on a company that fails to report a serious product hazard.**
- **Increase the penalty for serious criminal violations of product safety laws from misdemeanors to felonies, and eliminate the requirement that the agency give prior notice to the company that is criminally violating the law.**
- **Give CPSC more authority over company remedies for product recalls.**

CPSC also is expanding its partnerships with the American Academy of Pediatrics, the American Medical Women's Association, the Emergency Nurses Association and other health care organizations, to help find products that have the potential to cause death or serious injury, especially to children. This new product injury reporting network will provide even more sources of product injury data. CPSC currently collects information from a wide variety of sources, including hospital emergency rooms, fire investigators, news reports and coroners. The new network will expand its reach even further.

QUOTE FROM FIRST LADY

"The combination of this increased enforcement capability and higher civil and criminal penalties for not reporting would provide a strong deterrent against companies failing to notify CPSC about dangerous products," said CPSC Chairman Ann Brown.

-more-

When companies ignore the law, dangerous products can stay on store shelves, putting consumers at risk. CPSC has to do its own detective work to find out about the problem products and seek recalls. Increasing CPSC's authority and expanding its product injury reporting network will mean that dangerous products are recalled faster. This will prevent injuries and save lives.

The U.S. Consumer Product Safety Commission protects the public from unreasonable risks of injury or death from 15,000 types of consumer products under the agency's jurisdiction. To report a dangerous product or a product-related injury, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270, or visit CPSC's web site at <http://www.cpsc.gov/talk.html>. For information on CPSC's fax-on-demand service, call the above numbers or visit the web site at (<http://cpsc.gov/about/who.html>). To order a press release through fax-on-demand, call (301) 504-0051 from the handset of your fax machine and enter the release number. Consumers can obtain this release and recall information at CPSC's web site at <http://www.cpsc.gov>. To establish a link from your web site to this press release on CPSC's web site, create a link to the following address: <http://www.cpsc.gov/cpscpub/prerel/prhtml00/00XXX.html>. ###

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106TH CONGRESS

2D Session

H.R. _____

IN THE HOUSE OF REPRESENTATIVES

introduced the following bill; which was
referred to the Committee on _____

A BILL

To amend title 15, United States Code, regarding repair, replacement, or refund actions, civil penalties, and criminal penalties under the Consumer Product Safety Act and the Federal Hazardous Substances Act.

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

SEC. 1. SHORT TITLE

This Act may be cited as the "Consumer Product Safety Commission Enhanced Enforcement Act of 2000."

SEC. 2. REPAIR, REPLACEMENT, OR REFUND

A. The Consumer Product Safety Act, Section 2064(d) of title 15, United States Code, is amended –

(1) by striking "If" in line 1 of paragraph 1 and inserting "Subject to the last paragraph of this subsection, if"; and

(2) by adding at the end the following:

“If the Commission determines (after affording opportunity for an informal hearing) that the action that the manufacturer, distributor or retailer has elected to take under subsection (d)(1), (2), or (3) is not in the public interest, the Commission shall order the manufacturer, distributor or retailer to take whichever other action or actions specified in subsection (d)(1), (2), or (3) that the Commission determines to be in the public interest. If the Commission determines that both of the remaining actions specified in subsection (d)(1), (2), or (3) are in the public interest, the Commission shall order the manufacturer, distributor or retailer to take whichever of those actions the manufacturer, distributor or retailer elects.”

B. The Federal Hazardous Substances Act, Section 1274(b) of title 15, United States Code, is amended –

(1) by striking “If” in line 1 of paragraph 1 and inserting “Subject to the last paragraph of this subsection, if”; and

(2) by adding at the end the following:

“If the Commission determines (after affording opportunity for an informal hearing) that the action that the manufacturer, distributor or dealer has elected to take under subsection (b)(1), (2), or (3) is not in the public interest, the Commission shall order the manufacturer, distributor or dealer to take whichever other action or actions specified in subsection (b)(1), (2), or (3) that the Commission determines to be in the public interest. If the Commission determines that both of the remaining actions specified in subsection (b)(1), (2), or (3) are in the public interest, the

Commission shall order the manufacturer, distributor or dealer to take whichever of those actions the manufacturer, distributor or dealer elects.”

C. The Federal Hazardous Substances Act, Section 1274(c)(2) of title 15, United States Code, is amended to read as follows:

(1) by striking “If” in line 1 of paragraph 1 and inserting “Subject to the last paragraph of this subsection, if”; and

(2) by adding at the end the following:

“If the Commission determines (after affording opportunity for an informal hearing) that the action that the manufacturer, distributor or dealer has elected to take under subsection (c)(2)(A), (B) or (C) is not in the public interest, the Commission shall order the manufacturer, distributor or dealer to take whichever other action or actions specified in subsection (c)(2)(A), (B) or (C) that the Commission determines to be in the public interest. If the Commission determines that both of the remaining actions specified in subsection (c)(2)(A), (B) or (C) are in the public interest, the Commission shall order the manufacturer, distributor or dealer to take whichever of those actions the manufacturer, distributor or dealer elects.”

SEC. 3. CIVIL PENALTIES

A. The Consumer Product Safety Act, Section 2069(a) of title 15, United States Code, is amended to read as follows:

(a)(1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed \$7,000 for each such

violation. Subject to paragraph (2), a violation of section 19(a)(1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) shall constitute a separate offense with respect to each consumer product involved. A violation of section 19(a)(3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violations shall constitute a separate offense.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 19(a) –

(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

(3) (A) The penalty amount authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 2005, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register the authorized penalty amount that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The authorized penalty amount shall be prescribed by increasing the amount referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded up to –

(i) in the case of a penalty amount less than or equal to \$10,000, the nearest multiple of \$1,000;

(ii) in the case of a penalty amount greater than \$10,000, the nearest multiple of \$5,000.

(D) For purposes of this subsection:

(i) The term “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term “cost-of-living adjustment for the preceding five years” means the percentage by which –

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

B. The Federal Hazardous Substances Act, Section 1264(c) of title 15, United States Code, is amended to read as follows:

(1) Any person who knowingly violates section 4 shall be subject to a civil penalty not to exceed \$7,000 for each such violation. Subject to

paragraph (2), a violation of subsections (a), (b), (c), (d), (f), (g), (i), (j), and (k) of section 4 shall constitute a separate offense with respect to each substance involved. A violation of section 4(e) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by section 4(e); and, if such violation is a continuing one, each day of such violation shall constitute a separate offense.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of subsection (a) or (c) of section 4 –

(A) if the person who violated such subsection is not the manufacturer, importer, or private labeler or a distributor of the substance involved; and

(B) if such person did not have either (i) actual knowledge that such person's distribution or sale of the substance violated such subsection, or (ii) notice from the Commission that such distribution or sale would be a violation of such subsection.

(3) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 4, the Commission shall consider the nature of the substance, the severity of the risk of injury, the occurrence or absence of injury, the amount of the substance distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged.

(4) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or

whether it should be remitted or mitigated, and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the persons charged, the nature of the substance involved, the severity of the risk of injury, the occurrence or absence of injury, and the amount of the substance distributed. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(5) As used in the first sentence of paragraph (1), the term "knowingly" means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(6) (A) The penalty amount authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 2005, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register the authorized penalty amount that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The authorized penalty amount shall be prescribed by increasing the amount referred to in paragraph (1) by the cost-of-

living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded up to –

(i) in the case of a penalty amount less than or equal to \$10,000, the nearest multiple of \$1,000;

(ii) in the case of a penalty amount greater than \$10,000, the nearest multiple of \$5,000.

(D) For purposes of this subsection:

(i) The term “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term “cost-of-living adjustment for the preceding five years” means the percentage by which –

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

SEC. 4. CRIMINAL PENALTIES

A. The Consumer Product Safety Act, Section 2070 of title 15, United States Code, is amended to read as follows:

(a) Any person who knowingly violates section 19 of this Act shall be fined under title 18, United States Code, or be imprisoned not more than one year, or both, if such person is an individual, or fined under title 18, United States Code, if such person is an organization (as the term

“organization” is defined in 18 U.S.C. 18). Any person who knowingly and willfully violates section 19 of this Act shall be fined under title 18, United States Code, or be imprisoned not more than three years, or both, if such person is an individual, or fined under title 18, United States Code, if such person is an organization.

(b) Any individual director, officer, or agent of a corporation who authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of subsection (a) shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a).

B. The Federal Hazardous Substances Act, Section 1264(a) of title 15, United States Code, is amended to read as follows:

Any person who violates any of the provisions of section 4 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine under title 18, United States Code, or to imprisonment for not more than one year, or both, if such person is an individual, or to a fine under title 18, United States Code, if such person is an organization (as the term “organization” is defined in 18 U.S.C. 18); but for offenses committed willfully, or for second and subsequent offenses, the penalty shall be imprisonment for not more than three years, or a fine under title 18, United States Code, or both, if such person is an individual, or a fine under title 18, United States Code, if such person is an organization.